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Virginia Register of Regulations

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TABLE OF CONTENTS

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TABLE OF CONTENTS

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

February 2010 through November 2010

Volume: Issue	Material Submitted By Noon*	Will Be Published On
INDEX 1 Volume 26		**January 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
INDEX 2 Volume 26		**April 2010**
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
INDEX 3 Volume 26		**July 2010**
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010
26:24	July 14, 2010	August 2, 2010
26:25	July 28, 2010	August 16, 2010
26:26	August 11, 2010	August 30, 2010
FINAL INDEX Volume 26		**October 2010**
27:1	August 25, 2010	September 13, 2010
27:2	September 8, 2010	September 27, 2010
27:3	September 22, 2010	October 11, 2010
27:4	October 6, 2010	October 25, 2010
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Agency Decision

Title of Regulation: **12VAC5-490. Radiation Protection Regulations: Fee Schedule.**

Statutory Authority: § 32.1-229 of the Code of Virginia.

Name of Petitioner: Harvey V. Lankford, M.D.

Nature of Petitioner's Request: Request for Reducing Radiological Materials Licensing Fee. The petitioner requests that the recently adopted radiological materials fee schedules be reexamined and revised so as not to exceed comparable federal Nuclear Regulatory Commission (NRC) fees, and that they be consistent with what the petitioner believes the board represented in regulatory promulgation documents (culminating in the March 2009 final regulations) to the effect that licensees' fees would be "significantly reduced in most cases" and would therefore be less than those imposed by the NRC.

Agency Decision: Request granted.

Statement of Reasons for Decision: Desire to ensure that fees are appropriately structured to ensure the equitable treatment of small businesses.

Agency Contact: Leslie Foldesi, M.S., C.H.P., Director, Division of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

VA.R. Doc. No. R10-01; Filed January 6, 2010, 2:12 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION 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 Air Pollution Control Board intends to consider promulgating the following regulations: **9VAC5-530, Peak Shave Generator General Permit (Rev. Dg).** The purpose of the proposed action is to develop a general permit with terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new and existing minor source emissions units that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program) as defined in § 10.1-1307.02 B 4 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: § 10.1-1308 of the Code of Virginia.

Public Comment Deadline: March 18, 2010.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VA.R. Doc. No. R10-2295; Filed January 13, 2010, 11:52 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider promulgating the following regulations: **9VAC5-540, Emergency Energy Generator General Permit (Rev. Eg).** The purpose of the proposed action is to develop a general permit with terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new emissions units that meet the requirements of an emergency energy generation source as defined in § 10.1-1307.02 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: § 10.1-1308 of the Code of Virginia.

Public Comment Deadline: March 18, 2010.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VA.R. Doc. No. R10-2296; Filed January 13, 2010, 11:56 a.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: **9VAC25-191, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations.** The purpose of the proposed action is to amend and reissue the existing general permit that governs the authorization to manage pollutants from concentrated animal feeding operations (CAFOs), as the current general permit expires on December 31, 2010. This action includes amending the general permit regulation to reflect changes made to the federal CAFO program in 40 CFR Parts 9, 122, and 412 as published in the Federal Register Volume 73, No. 225, dated November 20, 2008, and adopted by the State Water Control Board on December 14, 2009.

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

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia; 40 CFR Parts 9, 122, 123, and 412.

Public Comment Deadline: March 3, 2010.

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

VA.R. Doc. No. R10-2297; Filed January 13, 2010, 11:59 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Professional and Occupational Regulation has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC120-30, Regulations Governing Polygraph Examiners**, that was published in 25:9 VA.R. 1678 January 5, 2009.

Agency Contact: Eric L. Olson, Executive Director, Polygraph Examiners Advisory Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-6166, FAX (804) 527-4401, or email polygraph@dpor.virginia.gov.

VA.R. Doc. No. R09-1751; Filed January 15, 2010, 12:17 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending the following regulations: **18VAC120-30, Regulations Governing Polygraph Examiners.** The purpose of the proposed action is to conduct a review and, where necessary, amend the regulations to reflect statutory changes, industry changes (especially those that involve technological advances in equipment and training), and changes suggested by its regulants and members of the public during the Polygraph Examiners Advisory Board's normal course of operations.

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

Statutory Authority: § 54.1-1802 of the Code of Virginia.

Public Comment Deadline: March 3, 2010.

Agency Contact: Eric L. Olson, Executive Director, Polygraph Examiners Advisory Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-6166, FAX (804) 527-4401, or email polygraph@dpor.virginia.gov.

VA.R. Doc. No. R10-2217; Filed January 13, 2010, 10:29 a.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Proposed Regulation

Title of Regulation: **1VAC55-20. Commonwealth of Virginia Health Benefits Program (amending 1VAC55-20-160, 1VAC55-20-320, 1VAC55-20-350).**

Statutory Authority: § 2.2-2818 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 2, 2010.

Agency Contact: Charles Reed, Associate Director, Department of Human Resource Management, 101 N. Fourteenth St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231, or email charles.reed@dhrm.virginia.gov.

Basis: Section 2.2-2818 of the Code of Virginia authorizes the Department of Human Resource Management (DHRM) to establish a plan for providing health benefits to state employees and their dependents.

Purpose: The intent of this amendment is to assist employees in providing health coverage to Other Qualified Adults (OQAs) who reside in their home but are not eligible for the Health Benefits Plan for State Employees. These regulations would allow an employee to cover up to one OQA. If the employee covers a spouse, then the employee has met the adult maximum allowed by these regulations and cannot cover any other adults. Additionally, children of such adults may be covered if they meet the criteria listed under stepchild found in 1VAC55-20-320.

Employees are seeing an increasing burden to provide for the health coverage of other adult individuals residing in their home, and the dependents of those other adults who otherwise meet eligibility requirements, but are not covered by the Health Benefits Plan for State Employees.

Substance: Currently only classified employees, their spouses and their dependent children have access to coverage through the Health Benefits Plan for State Employees. The intent of this amendment is to assist employees in providing health coverage to other adults who reside in their home but are not eligible for the Health Benefits Plan for State Employees. The amendments to these regulations allow only one adult per dependent unit. Thus, if the employee covers a spouse, then the employee has met the adult maximum allowed by these regulations and cannot cover any other adults.

The OQA at the time of proposed enrollment must be at least 19 years of age and must have shared primary residency with the employee for the previous 12 continuous months. If the 12-month residency requirement is broken, then a new 12-month continuous residency requirement must be established. Renters, boarders, tenants, and employees of anyone who lives in the household are not eligible regardless of residency status.

Employees will be required to complete an affidavit confirming eligibility of the OQA.

Furthermore, unmarried children of an OQA living with the employee in a parent-child relationship will be considered eligible dependents as defined by this amendment. However, these children may not be covered as a dependent unless their principal place of residence is with the employee, and the child is a member of the employee's household. The child must receive over one-half of his support from the employee or OQA. Also, if the biological parents are divorced, the support test is met if a natural or adopted child receives over one-half of his support from either parent or the OQA or in any combination of parents and OQA.

Issues: There should be no advantages or disadvantages imposed on the public by these amendments.

The primary advantages for the Commonwealth are to (i) assist state agencies and institutions of higher learning in the recruitment of more qualified candidates for employment and (ii) ease the burden on employees who are required to provide for the health coverage of other adult individuals residing in their home.

The primary disadvantage to these amendments is that including Other Qualified Adults might have an adverse experience impact on the plan, resulting in higher cost to employees and their agencies.

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

Summary of the Proposed Amendments to Regulation. The Department of Human Resource Management (Department) proposes to amend the Commonwealth of Virginia Health Benefits Program to allow employees to enroll up to one Other Qualified Adult (OQA) to receive health benefits. The proposed language specifies that "All costs associated with insuring the Other Qualified Adults, and the eligible children

of the Other Qualified Adults, are to be borne by the employee."

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact.

Under the proposed regulations,

"A state employee who does not already enroll a spouse in the health program may enroll one (Other Qualifying Adult) OQA for benefit coverage if the OQA at the time of proposed enrollment the OQA is at least 19 years of age and has shared primary residence with the employee for the previous 12 continuous months. If the 12 month residency requirement is broken, then a new 12 month continuous residency requirement must be established."

Further, unmarried children of an OQA living with the employee in a parent-child relationship may be covered as well under certain conditions. Unlike the spouse and children of the employee, "All costs associated with insuring the Other Qualified Adults, and the eligible children of the Other Qualified Adults, are to be borne by the employee."

The current and proposed regulations authorize separate pools for establishing contribution rates and for accounting for claims and contributions for state employees and participating local employers. The pools are based on "geographic and demographic characteristics and employment relationships." The current regulations specify that such pools may include but shall not be limited to:

1. Active state employees, including retirees under age 65 and not eligible for Medicare;

2. Active local employees (excluding separately rated employees of public school systems);

3. Active employees of public school systems;

4. Retired state employees over age 65 and retired state employees eligible for Medicare;

5. Retired local employees (excluding separately rated employees of public school systems);

6. Retired employees of public school systems; and

7. Active employees whose employer does not sponsor a health insurance plan.

The Department proposes to add an eighth pool to the list, "Other Qualified Adults and their children who do not also qualify as children of the employee."

Since all costs associated with insuring OQAs and their children who do not also qualify as children of the employee are to be paid by the employee, the contribution rates for insuring these individuals is likely to be much higher than for spouses and children of the employee. For example, the current monthly premium for an employee with spouse's COVA Care (with basic dental) Plus One plan is $101. Adding in the state's contribution the monthly cost is $898.[1] The actual monthly cost charged to the employee for the COVA Care (with basic dental) Plus One when the one is an OQA would be higher than $898 since all costs are to be borne by the employee and the Department has additional implementation and on-going costs.

The Department estimates the initial implementation costs would be $150,000 ($50,000 for systems and payroll changes, $50,000 for actuarial services, $50,000 for communications) and well in excess of $90,000 annually ($50,000 for systems and payroll changes, $30,000 for actuarial services, $10,000 for communications, and an undetermined amount for FICA tax for the after tax premium). These costs would be distributed to the employees who are enrolling in a plan that covers an OQA with or without eligible children.

Since the monthly cost will be quite high, there may not be many employees who elect to pay for insurance covering an OQA. The OQA may be better served through self insurance or other available insurance. Premiums at least nine times as high as the premiums for the existing employee plus one would likely only be appealing to OQAs with very high pre-existing medical costs. If only employees with an associated OQA with very high pre-existing medical costs enroll, the monthly costs per participant will be much higher in order for the insurance to be viable. There is the potential that in order for all costs associated with insuring the OQAs, and the eligible children of the OQAs, to be borne by the employee, the individual premium would be so high that no one would elect to enroll. If this were to happen, the Commonwealth would be left with implementation costs uncovered by employee contributions. In this case, the costs of the proposed amendments would exceed the benefits. If there are individuals who choose to enroll despite the rather high premiums, then the benefits can be said to exceed the costs since all of the Commonwealth's costs would be covered and some individuals will have gained health insurance that they and their associated employee found to be a better option than self insuring or other available insurance. In other words some individuals would be better off while no individuals or entities would be worse off.

Businesses and Entities Affected. The proposed amendments potentially affect employees of the Commonwealth, employees of municipalities and school boards enrolled in the Local Choice Program, and health insurance firms.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

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

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[1] Source: Department of Human Resource Management

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Human Resource Management concurs with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

Currently, only classified employees, their spouses and dependent children have access to coverage through the Health Benefits Plan for State Employees. The intent of this amendment is to assist employees in providing health coverage to other adult individuals who reside in their home, but are not eligible for the Health Benefits Plan for State Employees. The amendments to these regulations allow only one adult per dependent unit. Thus, if the employee covers a spouse, the adult maximum allowed by these regulations has been met, and the employee cannot cover any other adults.

Furthermore, unmarried children of an Other Qualified Adult (OQA) living with the employee in a parent-child relationship will be considered an eligible dependent as defined by this amendment. However, these children may not be covered as a dependent unless their principal place of residence is with the employee, and the child is a member of the employee's household. The child must receive over one-half of his support from the employee.

The amendments provide that costs associated with insuring OQAs are to be borne by the employee.

1VAC55-20-160. Establishing contribution rates and accounting for contributions and claims.

A. The department shall establish one or more pools for establishing contribution rates and for accounting for claims and contributions for state employees and participating local employers. The plan for local employers shall be rated separately from the plan established for state employees. There are hereby authorized pools based on geographic and demographic characteristics and employment relationships. Such pools may include but shall not be limited to:

1. Active state employees, including retirees under age 65 and not eligible for Medicare;

2. Active local employees (excluding separately rated employees of public school systems);

3. Active employees of public school systems;

4. Retired state employees over age 65 and retired state employees eligible for Medicare;

5. Retired local employees (excluding separately rated employees of public school systems);

6. Retired employees of public school systems; ~~and~~

7. Active employees whose employer does not sponsor a health insurance plan~~.~~ ; and

8. Other Qualified Adults and their children who do not also qualify as children of the employee.

Participating employers shall make applicable contributions to the employee health insurance fund.

B. Such contributions may take into account the characteristics of the group, such as the demographics of employees, inclusive of age, sex and dependent status of the employees of an employer; the geographic location of the employer or employees; claims experience of the employer; and the pool of the employers (for example, see subdivisions

1 through 6 of 1VAC55-20-160 A). Additionally, any such contributions may further be determined by spreading large losses, as determined by the department, across pools. Further, the department reserves the right to recognize, in its sole discretion, the claims experience of groups of sufficient size, regardless of their pool, where future claim levels can be predicted with an acceptable degree of credibility. The application of this rule by the department shall be exercised in a uniform and consistent manner.

C. The contribution rate in the aggregate will be composed of two factors; first, the current contribution and second, the amortization of experience adjustments. The current contributions will reflect the anticipated incurred claims and administrative expenses for the period; an experience adjustment will reflect gains and losses determined in accordance with an actuarial estimate. An experience adjustment will be part of the contributions for the succeeding year; however, the department may authorize the amortization of the experience adjustment for a period not to exceed three years.

D. The department will notify a terminating local employer of any adverse experience adjustment within six-calendar months of the time the local employer terminates participation in the program. Further the department reserves the right to modify the amount of the experience adjustment applicable to a terminating local employer for a period not to exceed 12 months from the end of the plan year in which such termination occurred. The experience adjustment shall be payable by the local employer in 12 equal monthly installments beginning 30 days after the date of notification by the department. In the event that a terminating local employer requests in writing an extension beyond a period of 12 months, the department may approve an extension up to 36 months provided the local employer agrees to pay interest at the statutory rate on any extended payments.

E. All costs associated with insuring the Other Qualified Adults, and the eligible children of the Other Qualified Adults, are to be borne by the employee.

Part IV
Employee Participation

1VAC55-20-320. Eligible employees.

A. State employees.

1. Full-time salaried, classified employees and faculty as defined in 1VAC55-20-20 are eligible for membership in the health benefits program. A full-time salaried employee is one who is scheduled to work at least 32 hours per week or carries a faculty teaching load considered to be full time at his institution.

2. Certain full-time employees in auxiliary enterprises (such as food services, bookstores, laundry services, etc.) at the University of Virginia, Virginia Military Institute and the College of William and Mary as well as other state institutions of higher learning are also considered state employees even though they do not receive a salaried state paycheck. The Athletic Department of Virginia Polytechnic Institute and State University is an example of a local auxiliary whose members are eligible for the program.

3. Certain full-time employees of the Medical College of Virginia Hospital Authority are eligible for the program as long as they are on the authority's payroll and were enrolled in the program on November 1, 1996. They may have payroll deductions for health benefits premiums even if they rotate to the Veterans' Administration Hospital or other acute care facility.

4. Other employees identified in the Code of Virginia as eligible for the program.

5. Classified positions include employees who are fully covered by the Virginia Personnel Act, employees excluded from the Virginia Personnel Act by subdivision 16 of § 2.2-2905 of the Code of Virginia, and employees on a restricted appointment. A restricted appointment is a classified appointment to a position that is funded at least 10% from gifts, grants, donations, or other sources that are not identifiable as continuing in nature. An employee on a restricted appointment must receive a state paycheck in order to be eligible.

B. Local employees.

1. Full-time employees of participating local employers are eligible to participate in the program. A full-time employee is one who meets the definition set forth by the local employer in the employer application.

2. Part-time employees of local employers may participate in the plan if the local employer elects and the election does not discriminate among part-time employees. In order for the local employer to cover part-time employees, the local employer must provide to the department a definition of what constitutes a part-time employee.

The department reserves the right to establish a separate plan for part-time employees.

C. Unavailability of employer-sponsored coverage.

1. Employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. The employers of such employees, officers, and teachers must apply for participation and certify that other employer-sponsored health care coverage is not available. The employers shall collect contributions from such individuals and timely remit them to the department or its designee, act as a channel of communication with the covered employee and otherwise assist the department as may be necessary. The employer shall act as fiduciary with respect to such contributions and shall be responsible for

any interest or other charges imposed by the department in accordance with these regulations.

2. Local employees living outside the service area of the plan offered by their local employer shall not be considered as local employees whose local employers do not offer a health benefits plan. For example, a local employee who lives in North Carolina and works in Virginia may live outside the service area of the HMO offered by his employer; however, he may not join the program individually.

3. Employer sponsorship of a health benefits plan will be broadly construed. For example, an employer will be deemed to sponsor health care coverage for purposes of this section and 1VAC55-20-260 if it utilizes § 125 of the Internal Revenue Code or any similar provision to allow employees, officers, or teachers to contribute their portion of the health care contribution on a pretax basis.

4. Individual employees and dependents who are eligible to join the program under the provisions of this subsection must meet all of the eligibility requirements pertaining to state employees except the identity of the employer.

D. Retirees.

1. Retirees are not eligible to enroll in the state retiree health benefits group outside of the opportunities provided in this section.

2. Retirees are eligible for membership in the state retiree group if a completed enrollment form is received within 31 days of separation for retirement. Retirees who remain in the health benefits group through a spouse's state employee membership may enroll in the retiree group at one of three later times: (i) future open enrollment, (ii) within 31 days of a qualifying mid-year event, or (iii) within 31 days of being removed from the active state employee spouse's membership.

3. Membership in the retiree group may be provided to an employee's spouse or dependents who were covered in the active employee group at the time of the employee's death in service.

4. Retirees who have attained the age of 65 or are otherwise covered or eligible for Medicare may enroll in certain plans as determined by the department provided that they apply for such coverage within 31 days of their separation from active service for retirement. Medicare will be the primary payor and the program shall serve as a supplement to Medicare's coverage.

5. Retirees who are ineligible for Medicare must apply for coverage within 31 days of their separation from active service for retirement. In order to receive coverage, the individual must meet the retirement requirements of his employer and receive an immediate annuity.

6. Local employers may offer retiree coverage at their option.

E. Dependents.

1. The following ~~family~~ individual members may be covered if the employee elects:

a. The employee's spouse. The marriage must be recognized as legal in the Commonwealth of Virginia.

b. Other Qualifying Adults (OQA). A state employee who does not already enroll a spouse in the health program may enroll one OQA for benefit coverage if the OQA at the time of proposed enrollment the OQA is at least 19 years of age and has shared primary residence with the employee for the previous 12 continuous months. If the 12-month residency requirement is broken, then a new 12-month continuous residency requirement must be established.

Employees will be required to complete an annual affidavit confirming eligibility of the OQA and to submit appropriate documentation.

~~b.~~ c. Children. Under the health benefits program, the following eligible children may be covered to the end of the year in which they turn age 23 regardless of student status (age requirement is waived for adult incapacitated children), if the child lives at home or is away at school, is not married and receives over one-half of his support from the employee, spouse or OQA.

(1) Natural and adopted children. In the case of natural or adopted children, living at home may mean living with the other parent if the employee is divorced.

Also, if the biological parents are divorced, the support test is met if a natural or adopted child receives over one-half of his support from either parent or ~~a combination of support from both parents. However, in order for the noncustodial parent to cover the child, the noncustodial parent must be entitled to claim the child as a dependent on his federal income tax return, or the custodial parent must sign a written declaration that he will not claim the child as a dependent on his federal income tax return~~ OQA, or in any combination of parents and OQA.

(2) Stepchildren. Unmarried stepchildren living with the employee in a parent-child relationship. However, stepchildren may not be covered as a dependent unless their principal place of residence is with the employee and the child is a member of the employee's household. A stepchild must receive over one-half of his support from the employee.

(3) Unmarried children of an OQA living with the employee in a parent-child relationship. However, these children may not be covered as a dependent unless their principal place of residence is with the employee and the

child is a member of the employee's household. The child must receive over one-half of his support from the employee or OQA.

~~(3)~~ (4) Incapacitated children. Adult children who are incapacitated due to a physical or mental health condition, as long as the child was covered by the plan and the incapacitation existed prior to the termination of coverage due to the child attaining the limiting age. The employee must make written application, along with proof of incapacitation, prior to the child reaching the limiting age. Such extension of coverage must be approved by the plan and is subject to periodic review. Should the plan find that the child no longer meets the criteria for coverage as an incapacitated child, the child's coverage will be terminated at the end of the month following notification from the plan to the enrollee. Eligibility rules require that the incapacitated dependent live at home, is not married, and receives over one-half of his support from the employee or OQA.

Adult incapacitated children of new employees may also be covered, provided that:

(a) The enrollment form is submitted within 31 days of hire;

(b) The child has been covered continuously by group employer coverage since the disability first occurred; and

(c) The disability commenced prior to the child attaining the limiting age of the plan.

The enrollment form must be accompanied by a letter from a physician explaining the nature of the incapacitation, date of onset and certifying that the dependent is not capable of self-support. This extension of coverage must be approved by the plan in which the employee is enrolled.

~~(4)~~ (5) Other children. A child in which a court has ordered the employee to assume sole permanent custody. The principal place of residence must be with the employee, and the child must a member of the employee's household.

Additionally, if the employee or spouse or OQA shares custody with the minor child who is the parent of the "other child," then the other child may be covered. The other child, the parent of the other child, and the spouse or OQA who has custody must be living in the same household as the employee.

When a child loses eligibility, coverage terminates at the end of the month in which the event that causes the loss of eligibility occurs.

~~There are certain categories of persons who may not be covered as dependents under the program. These include dependent siblings, grandchildren, nieces, and nephews except where the criteria for "other children" are satisfied. Parents, grandparents, aunts and uncles are not eligible for coverage regardless of dependency status.~~

Renters, boarders, tenants, and employees of anyone who lives in the household are not eligible regardless of residency status.

1VAC55-20-350. Membership.

A. Type of membership. Participants have a choice of ~~three~~ six types of membership under the program:

1. Single (employee only). If a participant chooses employee only membership, the health benefits program does not cover the employee's dependents (spouse, OQA, or children). A woman with single membership under the program does have maternity coverage. However, the newborn child is covered only for routine hospital nursery care, unless the mother changes to dual or family membership within 31 days of the date of birth.

2. Single Plus (employee and Other Qualifying Adult).

3. Dual (employee and one eligible dependent).

4. Dual Plus (employee and one eligible dependent child and Other Qualifying Adult).

~~3.~~ 5. Family ~~membership~~ (employee and two or more eligible dependents).

6. Family Plus (employee and two or more eligible dependents and Other Qualifying Adult).

B. Changing type of membership.

1. Employees may change membership subject to 1VAC55-20-370.

a. During open enrollment.

b. Within 31 days of a qualifying mid-year event. Any such change in membership must be on account of and consistent with the event.

c. Within 31 days of a cost and coverage change, as acknowledged by the department.

2. All changes in membership must be made on a prospective basis except for the birth, adoption or placement for adoption of a child.

3. If the change is from single to dual or family membership or vice versa because of a qualifying mid-year event, the employee must certify in the enrollment action the type of event and the date of the event.

VA.R. Doc. No. R10-2223; Filed January 13, 2010, 8:37 a.m.

TITLE 2. AGRICULTURE

STATE MILK COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Milk Commission is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act pursuant to § 2.2-4007.2 of the Code of Virginia. Section 2.2-4007.2 provides that if an agency chooses to amend a regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 provided the amended regulation is (i) adopted by December 31, 2010, and (ii) consistent with federal and state law and regulations.

Title of Regulation: **2VAC15-20. Regulations for the Control and Supervision of Virginia's Milk Industry (amending 2VAC15-20-90).**

Statutory Authority: § 3.2-3204 of the Code of Virginia.

Effective Date: February 9, 2010.

Agency Contact: Rodney L. Phillips, Administrator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Room 205, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, or email rodney.phillips@vdacs.virginia.gov.

Summary:

This amendment permits the filing of documents required by the regulation in an electronic format specified by the Virginia Department of Agriculture and Consumer Services.

2VAC15-20-90. Records and reports.

A. Each distributor shall accurately prepare and maintain all records necessary to enable the agency or its representative to determine:

1. The amount, source, grade, butterfat test and price paid for all milk and cream received from all sources. These records must show daily transactions, summarized into monthly totals.

2. The use or disposition of all milk and cream received from all sources. These records must show retail, wholesale and other sales by units and the value received for each group of units shown as daily transactions, summarized into monthly totals.

3. The butterfat tests of each producer's milk made according to this chapter, the date such tests were made and the butterfat test of each commodity sold.

B. Not later than the seventh day of each month all licensees, except retail distributors, shall furnish the agency with information which specifies all receipts and utilization of milk, along with other information as may be required by the agency. This information may be filed with the agency in any of the following approved formats:

1. Agency forms;

2. Federal reports;

3. Licensee generated printouts or reports; ~~and~~ or

4. ~~Computer media (only if the data furnished is compatible with agency hardware and software configurations)~~ An electronic format specified by the Virginia Department of Agriculture and Consumer Services (VDACS), including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

Additionally, this information must be transmitted to the agency in an agency approved manner in order to meet established deadlines. This information must be compiled from records of a permanent nature and these records shall be subject to audit and inspection by any authorized representative of the approving authority. Not later than the 12th day of each month the agency shall inform each processing general distributor of the classified sales allocated to each producer or cooperative association for the previous month.

C. Each processing general distributor, producer general distributor and distributor shall document in detail each wholesale transaction either in written or electronic form. This documentation shall be maintained for at least six calendar months, or until audited, and be subject to inspection by any authorized representative of the agency.

D. All books and records, defined under Chapter 32 (§ 3.2-3200 et seq.) of Title 3.2 of the Code of Virginia, of all licensed distributors, except retail, producers and cooperative associations of producers shall be subject to audit by any authorized representative of the agency.

E. Information relating to individual distributors, producers or cooperative associations of producers shall be confidential.

F. Cooperative associations shall file with the agency a monthly statement. This statement, to be filed not later than the eighth of the subsequent month, shall list the name, base allotment, and production of each of the cooperative ~~associations~~ associations' baseholding producer members.

G. Cooperative associations shall file with the agency by the seventh of the month a statement which indicates total daily deliveries by day made to licensed processing general distributors for deliveries made in the preceding month.

H. Cooperative associations shall furnish the agency not later than the last day of each month a copy of all billings for milk deliveries to licensed processing general distributors made in the prior month.

VA.R. Doc. No. R10-2051; Filed January 5, 2010, 3:46 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Final Regulation

Titles of Regulations: **3VAC5-20. Advertising (amending 3VAC5-20-10, 3VAC5-20-20, 3VAC5-20-30, 3VAC5-20-40, 3VAC5-20-60, 3VAC5-20-90, 3VAC5-20-100; repealing 3VAC5-20-50, 3VAC5-20-70, 3VAC5-20-80).**

3VAC5-30. Tied-House (amending 3VAC5-30-10, 3VAC5-30-20, 3VAC5-30-60; adding 3VAC5-30-80).

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Effective Date: March 5, 2010.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

Summary:

This action amends the regulations governing the advertising of alcoholic beverages and the tied-house regulations to maintain a reasonable separation between manufacturing and wholesaling interests and retailers of alcoholic beverages. Several outdated advertising regulations are repealed and others are amended to conform to statutory changes or modernize them. Both 3VAC5-20 and 3VAC5-30 are reorganized and certain provisions dealing with limitations on the provision of advertising materials by manufacturers or wholesalers to retailers are now in 3VAC5-30 dealing with tied-house restrictions.

Since the proposed stage, the proposed amendments to 3VAC5-20-100 and 3VAC5-30-30 have been withdrawn. Textual changes made to the regulations are as follows:

1. At the proposed stage, 3VAC5-20-20 prohibited retail licensees from using illuminated advertising materials within their establishments. The final version contains an exemption for back bar pedestals upon which spirits advertising appears.

2. 3VAC5-20-30, as proposed, prohibited any advertising of "Happy Hour" promotions on exterior signs at retail premises. The final version authorizes restaurants to post one two-dimensional sign, not to exceed 17" by 22", containing the terms "Happy Hour" or "Drink Specials" and the hours during which reduced drink prices are charged.

3. The proposed amendments to 3VAC5-20-60 would have allowed manufacturers, wholesalers, or their authorized representatives conducting consumer tasting events to give novelty and specialty advertising items to each consumer participating in the tasting. The final version eliminates the ability of wholesalers to provide such items to consumers at tastings.

4. The proposed version of 3VAC5-20-90 allowed coupons for alcoholic beverages to be distributed over the internet. The final version adds electronic mail as an authorized means of coupon distribution.

5. The proposed version of 3VAC5-30-60 would have allowed manufacturers or wholesalers of wine or beer to sell logoed wine glasses to banquet licensees. The revised final section would extend the privilege to allow all alcoholic beverage manufacturers, their authorized vendors, or wholesalers to sell glasses upon which advertising material may appear to banquet licensees.

6. The proposed version of 3VAC5-30-80 B provided that "manufacturers, bottlers, and wholesalers of alcoholic beverages" may provide certain advertising materials to retailers. The final version adds "authorized vendors" of manufacturers to the list of authorized providers.

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.

3VAC5-20-10. Advertising; generally; cooperative advertising; federal laws; cider; restrictions.

A. All alcoholic beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by regulation of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical, publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

~~B. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1 216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.~~

~~C.~~ B. Advertising of cider, as defined in § 4.1-213 of the Code of Virginia, shall conform ~~with~~ to the requirements for advertising beer.

~~D.~~ C. The board may issue a permit authorizing a variance from any of its advertising regulations for good cause shown.

~~E.~~ D. No advertising shall contain any statement, symbol, depiction or reference that:

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;

2. Is ~~lewd,~~ obscene ~~or indecent~~ or is suggestive of any illegal activity;

3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess;

4. Is false or misleading in any material respect~~, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product~~;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Constitutes or contains a contest or sweepstakes where a purchase is required for participation; or

8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages, except for refund coupons and combination packaging for wine. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

~~F.~~ E. The board shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages and (ii) the advertising prominently states that the product is nonalcoholic.

3VAC5-20-20. Advertising; interior; retail licensees.

A. As used in this section, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with 3VAC5-20-10 ~~F~~ E.

~~B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:~~

~~1.~~ B. Retail licensees may use any ~~nonpermanent~~ [~~nonilluminated~~] advertising ~~material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard, canvas or plastic stock; however, canvas advertising materials shall be restricted to fabric banners containing only two-dimensional display surfaces and plastic advertising materials shall be restricted to (i) thin sheets or strips containing only two-dimensional display surfaces or (ii) any inflatable plastic items not in excess of $5.00 in wholesale value. Such advertising materials may be obtained by such retailers from any source, including manufacturers, bottlers and wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials; provided, however, that nonpermanent advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a spirits solicitor's permit;~~ materials having a wholesale value of not more than $250 per item that comply with 3VAC5-20-10 inside licensed retail establishments. [Advertising materials may not be illuminated, except for back bar pedestals upon which advertising matter regarding spirits may appear.]

~~2. Retail on-premises and on-and-off-premises licensees may use any mechanical or illuminated devices which are designed or manufactured to serve as permanent point-of-sale advertising. Such advertising devices may be obtained and displayed by retailers provided that any such devices do not make reference to brands of alcoholic beverages offered for sale in such retail establishment or to brands or the name of any manufacturer whose alcoholic beverage products are offered for sale in such retail establishment and, provided further, that such advertising materials are not supplied, installed, maintained or otherwise serviced by any manufacturers, bottlers or wholesalers of alcoholic beverages, and that no such advertising relating to spirits shall be authorized in an establishment not licensed to sell mixed beverages;~~

~~3. Notwithstanding subdivision B 2, retail licensees may display any permanent point-of-sale advertising pertaining to nonalcoholic beer or nonalcoholic wine. Any such brand of nonalcoholic beer or nonalcoholic wine may be offered for sale in the retail establishment. Such permanent point-of-sale advertising may not be supplied, installed, maintained or otherwise serviced by any manufacturer, bottler or wholesaler of alcoholic beverages;~~

4. Advertising materials described in the following categories may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:

a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper, cardboard, canvas or plastic stock supplied by any manufacturer, bottler or wholesaler of alcoholic beverages in accordance with this section provided, however, that nonpermanent advertising materials referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers or their employees unless they hold a spirits solicitor's permit;

b. Works of art so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;

c. Materials displayed in connection with the sale of over the counter novelty and specialty items in accordance with 3VAC5-20-60;

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semiprofessional or amateur athletic and sporting events, and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to 3VAC5-20-100 B;

e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers or wholesalers may supply to retailers napkins, placemats and coasters which contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine as permitted under 3VAC5-20-10 F, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo and address of the sponsoring manufacturer, bottler or wholesaler, provided such recognition is subordinate to the message, occupies no more than 10% of the space, and contains no reference to or pictures of the sponsor's brand or brands;

f. Draft beer and wine knobs, spirits back bar pedestals, bottle or can openers, beer, wine and spirits clip ons and table tents, subject to 3VAC5-30-60;

g. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area; and point of sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package; and

h. Refund coupons, if they are supplied, displayed and used in accordance with 3VAC5-20-90.

C. No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

D. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.

E. Every retail licensee who, pursuant to subdivisions B 2 or B 3, obtains any permanent point of sale advertising shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.

3VAC5-20-30. Advertising; exterior~~; signs; vehicles; uniforms~~.

Outdoor alcoholic beverage advertising shall comply with 3VAC5-20-10, be limited to signs and is otherwise discretionary, except as follows:

1. Manufacturers and wholesalers, including wineries and farm wineries:

a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;

b. No more than two signs, which must be directional in nature, not farther than ~~½~~ 1/2 mile from the licensed

establishment limited in dimension to 64 square feet with advertising limited to brand names;

c. If the establishment is a winery also holding a retail off-premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information, may be erected in accordance with state and local rules, regulations and ordinances; and

d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

2. Retailers, including mixed beverage licensees, other than carriers and clubs:

a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment; ~~and~~

b. ~~Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including~~ Signs may not include any reference to or depiction of ~~"Bar Room," "Saloon," "Speakeasy,"~~ "Happy Hour," or references or depictions of similar import, ~~nor to prices of alcoholic beverages,~~ including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages [, except that, notwithstanding the provisions of 3VAC5-50-160 B 8, a retail licensee may post one two-dimensional sign not exceeding 17" x 22", attached to the exterior of the licensed premises, limited in content to the terms "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at reduced prices] ~~Notwithstanding the above, the terms "Bar," "Bar Room," "Saloon," and "Speakeasy" may be used in combination with other words that connote a restaurant as part of the retail licensee's trade name~~; and

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

3VAC5-20-40. Advertising; ~~newspaper, magazines, radio, television, trade publications, etc~~ print and electronic media.

A. ~~Beer, wine and mixed~~ Alcoholic beverage advertising in the print or electronic media is permitted with the following ~~exceptions~~ requirements and conditions:

~~1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits";~~

~~2. The following terms or depictions thereof are prohibited unless they are used in combination with other words that connote a restaurant and they are part of the licensee's trade name: "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import; and~~

~~3. Any references to "Happy Hour" or similar terms are prohibited.~~

~~B. Further requirements and conditions are as follows~~:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser~~;~~.

~~2. Advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college publications shall not constitute cooperative advertising;~~

~~3.~~ 2. Advertisements of ~~beer, wine and mixed~~ alcoholic beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

~~Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on premises," "beer," "wine," "mixed beverages," "cocktails," or any combination of these words; and~~

~~4.~~ 3. Advertisements of ~~beer, wine and mixed~~ alcoholic beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3; notwithstanding the above mentioned provisions, all advertisements of ~~beer, wine and mixed~~ alcoholic beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.

~~5.~~ 4. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication which is distributed or intended to be distributed primarily to persons over 18 and under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message~~, occupies no more than 10% of the advertising space,~~ and contains no ~~reference to or~~ pictures of the sponsor's ~~brand or brands, mixed drinks, or exterior signs~~ product. Any public service advertisement involving alcoholic beverages shall contain a statement specifying the legal drinking age in the Commonwealth.

B. As used in the section, "electronic media" shall mean any system involving the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, television, electromagnetic, photo-electronic, or photo-optical system, including, but not limited to, radio, television, electronic mail, and the Internet.

3VAC5-20-50. ~~Advertising; newspapers and magazines; programs; spirits.~~ (Repealed.)

~~A. Except as provided in subsection B, alcoholic beverage advertising of products greater than 14% alcohol by manufacturers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed programs relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:~~

~~1. Required statements:~~

~~a. Name and address (street address optional) of the responsible advertiser.~~

~~b. Contents of the product advertised in accordance with all labeling requirements. If only the class of spirits or wine, such as "whiskey" or "chardonnay" is referred to, statements as to contents may be omitted.~~

~~c. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.~~

~~2. Prohibited statement. Any reference to a spirit's price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.~~

~~3. Further limitation. Spirits may not be advertised in college student publications as defined in 3VAC5-20-40 B nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.~~

~~B. Electronic advertising of alcoholic beverages containing more than 14% alcohol but less than 22% alcohol shall be permitted as long as it emphasizes that such alcoholic beverages are traditionally served with meals or immediately before or following a meal.~~

3VAC5-20-60. Advertising; novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of $10 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give licensed retailers items not in excess of $10 in wholesale value~~, limited to one item per retailer, and one item per employee, per visit, which may not be displayed~~ in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees; however, manufacturers [~~, wholesalers,~~] or their authorized representatives [other than wholesalers] conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event; and such items bearing moderation and responsible drinking messages may be displayed by the licensee and his employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or its brands are subordinate in type size and quantity of text to such moderation message;

3. Items in excess of $10 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship

of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;

4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes; and

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. ~~Wholesale licensees in the Commonwealth may not put order blanks on the package.~~ Wholesalers may not be involved in the redemption process.

3VAC5-20-70. ~~Advertising; fairs and trade shows; alcoholic beverage displays.~~ (Repealed.)

~~Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:~~

~~1. Display of alcoholic beverages in closed containers with informational signs provided such merchandise is not sold or given away except as permitted in 3VAC5-70-100;~~

~~2. Distribution of informational brochures, pamphlets, and the like, relating to alcoholic beverages; and~~

~~3. Distribution of novelty and specialty items bearing alcoholic beverage advertising not in excess of $5.00 in wholesale value.~~

3VAC5-20-80. ~~Advertising; film presentations.~~ (Repealed.)

~~Advertising of alcoholic beverages by means of film presentations is restricted to the following:~~

~~1. Presentations made only to bona fide private groups, associations or organizations upon request; and~~

~~2. Presentations essentially educational in nature.~~

3VAC5-20-90. Advertising; coupons.

A. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, the Internet, by direct mail [or electronic mail] to consumers or as part of, or attached to, the package. Beer ~~refund coupons may be part of, or attached to, the package only if the brewery put them on at the point of manufacture; however, beer~~ and wine wholesalers may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. ~~Wholesale beer licensees in the Commonwealth may not put them on the package.~~ Wholesale ~~wine~~ licensees may attach refund coupons to the package ~~and wholesale wine licensees may provide coupon pads to retailers for use by retailers on their premises,~~ if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or his representative.

2. Manufacturers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees are not permitted to offer coupons.

4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

3VAC5-20-100. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally. Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and

sporting events and events of a charitable or cultural nature by [distilleries, wineries, and breweries ~~manufacturers and wholesalers~~].

B. Restrictions and conditions.

1. Any sponsorship on a college, high school or younger age level is prohibited;

2. Cooperative advertising, as defined in ~~3VAC5-20-10~~ 3VAC5-30-80, is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media, including programs, tickets and schedules for the event, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Advertising materials as defined in 3VAC5-30-60 G, table tents as defined in 3VAC5-30-60 H and canisters are permitted; [~~and~~]

8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it [~~.~~; and

9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.]

3VAC5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wine wholesaler may perform, except on Sundays, and a beer wholesaler may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);

2. Restock wine and beer;

3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;

4. Transfer wine and beer between storerooms, between displays, and between storerooms and displays; and

5. Create or build original displays using wine or beer products only.

B. Prohibited acts. A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:

a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler; or

b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler;

2. Mark or affix retail prices to products other than those sold by the wholesaler to the retailer; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products that a manufacturer discontinues nationally may be returned and money refunded;

d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or

g. Wine or beer may be exchanged on an identical quantity and brand basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

3VAC5-30-20. Restrictions upon employment; exceptions.

No retail licensee shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages; nor shall any licensed manufacturer, bottler or wholesaler employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages.

This section shall not apply to banquet licensees, farm winery licensees, or to off-premises winery licensees.

3VAC5-30-30. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, [or] (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board [~~, or (v) a credit or debit card issued in the name of the licensee or permittee or in the trade name of the licensee or permittee~~].

C. If a check, money order or electronic fund transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board for the following items shall be for cash, as defined in subsection B:

1. State license taxes and application fees;

2. Purchases of alcoholic beverages from the board by mixed beverage licensees;

3. Wine taxes and excise taxes on beer and wine coolers;

4. Solicitors' permit fees and temporary permit fees;

5. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;

6. Civil penalties or charges and costs imposed on licensees and permittees by the board; and

7. Forms provided to licensees and permittees at cost by the board.

3VAC5-30-60. Inducements to retailers; beer and wine tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges (may be sold at cost);

c. Draft arms or standards;

d. Draft boxes; and

e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;

2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or

3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed ~~$10~~ $20. Openers in excess of ~~$10~~ $20 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

F. Manufacturers [of alcoholic beverages and their authorized vendors] or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees [~~wine~~] glasses or paper or plastic cups upon which advertising matter regarding [~~wine or beer~~ alcoholic beverages] may appear.

G. Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with ~~3VAC5-20-20~~ 3VAC5-30-80. Manufacturers, bottlers and wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;

2. Be for interior use only;

3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and

4. Be made available to all retail licensees.

H. Any manufacturer, bottler or wholesaler of wine, beer or spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents.

I. Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

J. Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.

3VAC5-30-80. Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers.

A. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer, or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer, or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

B. Manufacturers [~~, bottlers,~~ or their authorized vendors as defined in § 4.1-216.1 of the Code of Virginia] and wholesalers of alcoholic beverages may sell, lend, buy for, or give to retailers any nonilluminated advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of $40 or less per item. Advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a spirits solicitor's permit.

C. Manufacturers, bottlers, or wholesalers may supply to retailers napkins, placemats, and coasters that contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo, and address of the sponsoring manufacturer, bottler, or wholesaler, provided such recognition is subordinate to the message.

D. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, may sell service items bearing alcoholic brand references to on-premises retail licensees. Such retail licensee may display the service items on the premises of his licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" means articles of tangible personal property normally used by the employees of on-premises licensees to serve alcoholic beverages to customers including, but not limited to, glasses, napkins, buckets, and coasters.

E. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography, and history of a wine manufacturing area; and point-of-sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package. Solicitors holding permits under the provisions of 3VAC5-60-80 may provide point-of-sale entry blanks relating to contests and sweepstakes to mixed beverage licensees for use on the premises if such items are offered to all mixed beverage licensees equally, and the solicitor has obtained the consent, which may be a continuous consent, of each mixed beverage licensee or his representative.

F. Manufacturers, bottlers, or wholesalers may supply refund coupons, if they are supplied, displayed, and used in accordance with 3VAC5-20-90.

G. No manufacturer, bottler, wholesaler, or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations, or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

H. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler, or wholesaler using any normal and customary installation materials. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.

I. Every retail licensee who obtains any point-of-sale advertising shall keep a complete, accurate, and separate record of all such material obtained. Such records shall show (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefore. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.

VA.R. Doc. No. R08-878; Filed January 13, 2010, 9:37 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Fast-Track Regulation

Title of Regulation: **4VAC5-30. Virginia State Parks Regulations (amending 4VAC5-30-10 through 4VAC5-30-50, 4VAC5-30-70, 4VAC5-30-90, 4VAC5-30-120, 4VAC5-30-140, 4VAC5-30-150, 4VAC5-30-160, 4VAC5-30-190, 4VAC5-30-220 through 4VAC5-30-280, 4VAC5-30-300, 4VAC5-30-310, 4VAC5-30-330, 4VAC5-30-340, 4VAC5-30-360 through 4VAC5-30-400; adding 4VAC5-30-32, 4VAC5-30-274, 4VAC5-30-276, 4VAC5-30-410, 4VAC5-30-420, 4VAC5-30-422; repealing 4VAC5-30-100, 4VAC5-30-110, 4VAC5-30-210, 4VAC5-30-320, 4VAC5-30-350).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 3, 2010.

Effective Date: March 18, 2010.

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

Basis: Under § 10.1-104.4 of the Code of Virginia the department has the authority to "prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law." The department is charged with "foster[ing] the upkeep and maintenance" of parks and recreational areas under § 10.1-200 of the Code of Virginia. The Virginia State Parks Regulations allow for the public use of these areas within certain parameters.

Purpose: The significant majority of amendments proposed by this regulatory action were recommendations made by the Attorney General's Government and Regulatory Reform Taskforce. The amendments include striking sections that are redundant because the illegal activities are already covered in the Code of Virginia; clarifying existing language to be consistent with similar regulations and the Code of Virginia; clarifying the permitting process and allowing for electronic filing of permits, applications, and reservations; and making several grammatical changes. These suggested amendments will make the State Parks Regulations consistent with the Code of Virginia and easier for the public to understand.

An additional section regarding the potential consequences for failing to comply with the State Parks Regulations and all other applicable laws and regulations has been added for clarity. It also serves to increase public awareness that all laws and regulations are applicable on park lands.

Three new sections have been created. One new section permits the director to prohibit the importation of firewood or allow the entry of firewood into state parks only under specified conditions. This section grants the director the ability, if necessary, to address a potential threat to park forests and habitat from an infesting species of concern, such as an emerald ash borer. One of the primary ways infecting species are spread is through the sale and delivery of firewood. The other new sections regarding the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife clearly state existing practices and procedures already employed by state parks. Prohibiting the release of animals and the feeding of wildlife are necessary to ensure the health and safety of the existing wildlife communities as well as the public.

These regulations are necessary to protect the public health, safety, and welfare while visiting Virginia state parks. These regulations define the unique conducts expected by visitors to the parks. Examples include the prohibitions on removing flowers and plants, camping and cabin policies, hunting and fishing procedures, and the correct use of numerous types of park trails.

Rationale for Using Fast-Track Process: The proposed amendments are believed to be noncontroversial. The majority are recommendations of the Attorney General's Government and Regulatory Reform Task Force and Chapter 624 of the 2009 Acts of Assembly. The additional section regarding the potential consequences for failing to comply with the State Parks Regulations and all other applicable laws and regulations has been added for clarity and to increase public awareness. The new sections regarding the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife clearly state existing practices and procedures already employed by state parks. These prohibitions protect the existing wildlife communities at the parks and the general public. The section regarding the importation of firewood allows the director to act, if necessary, to protect the forest and habitat of the parks. One of the primary ways infecting species are spread is through the importation of infected or infested firewood into any park.

Substance: The significant majority of amendments proposed by this regulatory action were recommendations made by the Attorney General's Government and Regulatory Reform Taskforce. The amendments include striking sections that are redundant because the illegal activities are already covered in the Code of Virginia; clarifying existing language to be consistent with similar regulations and the Code of Virginia; clarifying the permitting process and allowing for electronic

filing of permits, applications, and reservations; and making several grammatical changes. These suggested amendments will make the State Parks Regulations consistent with the Code of Virginia and easier for the public to understand. An additional section regarding the potential consequences for failing to comply with the State Parks Regulations and all other applicable laws and regulations has been added for clarity. It also serves to increase public awareness that all laws and regulations are applicable on park lands. Three new sections have been created. One new section permits the director to prohibit the importation of firewood or allow the entry of firewood into state parks only under specified conditions. This section grants the director the ability, if necessary, to address a potential threat to park forests and habitat from an infesting species of concern, such as an emerald ash borer. The other new sections regarding the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife clearly state existing practices and procedures already employed by state parks. These regulations are necessary to protect the public health, safety, and welfare of those visiting Virginia State Parks. These regulations define the unique conducts expected by visitors to the parks. Examples include the prohibitions on removing flowers and plants, camping and cabin policies, hunting and fishing procedures, and the correct use of numerous types of park trails.

Issues: There are no disadvantages to the public, the department, or others regarding any of the recommendations of the Attorney General's Government and Regulatory Reform Task Force and Chapter 624 of the 2009 Acts of Assembly. The recommendations of the Task Force will make the State Parks Regulations consistent with the Code of Virginia, potentially make the filing of permit applications and reservations more efficient, and make the regulations more easily understood by the public.

There are no disadvantages to the public, the department, or others regarding the section regarding the potential consequences for failing to comply with the State Parks Regulations and all other applicable laws and regulations.

There are no disadvantages to the public, the department, or others regarding the sections prohibiting the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife. The addition of these sections clearly state existing park policies and procedures and will serve to ensure the continued health and welfare of the existing wildlife populations and the general public.

There may be some minor disadvantages to the public and the department regarding the new section on the importation of firewood. Should the rare need for the implementation of such a prohibition occur, visitors will need to bring firewood that has been treated in a manner set out by the United States Department of Agriculture, buy firewood from the park itself, or collect firewood from within the confines of the park in accordance with park policy. The department will have to enforce this provision if it is enacted. However, the primary advantage is the continued safety of the forests and habitats of the parks. One of the primary methods infecting species are spread is through the importation of infected or infested firewood. By significantly curtailing the arrival of firewood into state parks, the health of the forests will be protected when it is shown to be necessary.

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

Summary of the Proposed Amendments to Regulation. The Department of Conservation and Recreation (Department) proposes to amend the Virginia State Parks Regulations by: 1) striking sections which are redundant to language in the Code of Virginia, 2) clarifying existing language without changing requirements, and 3) changing some language to be consistent with the Code of Virginia. Additionally, the Department proposes to amend the regulations to allow the Director of the Department to prohibit the importation of firewood or allow the entry of firewood into state parks when such firewood may be infected or infested with a species of concern.

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

Estimated Economic Impact. When language in regulations and the Code of Virginia conflict, the Code of Virginia applies. Thus the proposal to change language in the regulations to be consistent with the Code will have no effect on requirements. Striking redundant language and clarifying existing language without changing requirements will of course not affect requirements either.

The proposed regulations specify that "The Director of the Department of Conservation and Recreation may prohibit the importation of firewood or certain types of firewood into any park or allow such entry only under specified conditions when such firewood may be infected or infested with a species of concern." When such a determination has been made, firewood to be used by any person within a park must be either: 1) purchased from the park, 2) be from a certified source, or 3) be collected from within the confines of the park in accordance with park policy. The proposed regulations specify the conditions under which firewood may be certified.

The purpose of the proposed ability to ban the importation of firewood under specified circumstances is to address a potential threat to park forests and habitats from an infesting species of concern, such as an emerald ash borer. One of the primary ways infecting species are spread is through the sale and delivery of firewood. According to the Department firewood importation bans would be rare. Since such bans would only occur when doing so would likely reduce damage to the health of park forests and habitats, and park visitors would still in most cases likely have access to alternate

firewood, this proposal likely produces a net benefit for the Commonwealth.

Businesses and Entities Affected. Virginia state parks, sellers of firewood, and park visitors are affected by these regulations.

Localities Particularly Affected. These regulations and the proposed amendments particularly affect localities where state parks are situated.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. In the rare occasions[1] that a firewood ban may be necessary, some businesses which collect and sell firewood could possibly be negatively affected if the importation of firewood was curtailed to address a threat. However, firewood retailers which have been certified might benefit by a commensurate increased demand.

Small Businesses: Costs and Other Effects. In the rare occasions that a firewood ban may be necessary, some small businesses which collect and sell firewood could possibly be negatively affected if the importation of firewood was curtailed to address a threat. However, firewood retailers (likely small businesses) which have been certified might benefit by a commensurate increased demand.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no alternate method that would reduce the small potential adverse impact on a small number of firewood retailers that would also meet the desired policy goal of reduced risk to the health of park forests and habitats.

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

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

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[1] According to the Department of Conservation and Recreations, firewood bans would occur only infrequently.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Conservation and Recreation concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the Virginia State Parks Regulations (4VAC5-30).

Summary:

The amendments incorporate recommendations received from the Attorney General's Government and Regulatory Reform Task Force including conforming the definition of person with the definition used in § 2.2-419 of the Code of Virginia (4VAC5-30-10), striking sections that are redundant because the illegal activities are already covered in the Code of Virginia (4VAC5-30-100, 4VAC5-30-110, and 4VAC5-30-300 B), and clarifying existing language to be consistent with similar regulations (4VAC5-30-140, 4VAC5-30-150, 4VAC5-30-160, 4VAC5-30-220, 4VAC5-30-270, 4VAC5-30-280, and 4VAC5-30-310). 4VAC5-30-320 is repealed because the subject is covered in the Code of Virginia. Amendments clarify the permitting process for certain activities (4VAC5-30-40, 4VAC5-30-50, 4VAC5-30-220, 4VAC5-30-370, and 4VAC5-30-390).

Revisions to 4VAC5-30-40, 4VAC5-30-150, and 4VAC5-30-160 allow for the electronic filing of permits and reservations in a manner determined by the department (which is often specified in policy) in accordance with Chapter 624 of the 2009 Acts of Assembly.

An additional section (4VAC5-30-32) regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations is added for clarity.

Three new sections are created regarding the importation of firewood, release of animals or wildlife on park property, and the feeding of wildlife. The importation of firewood (4VAC5-30-410) may be prohibited by the director of the department. This section is created in response to a potential threat by an infecting species, such as the emerald ash borer, which may jeopardize the forest and habitat in state parks. Both sections 4VAC5-30-420 (prohibiting the release of animals or wildlife into park property) and 4VAC5-30-422 (prohibiting the feeding of wildlife) are created to clearly articulate department

practice regarding these actions and to protect the existing wildlife communities at the parks.

4VAC5-30-10. Definition of terms.

Whenever used in this chapter, the following respective terms, unless otherwise therein expressly defined, shall mean and include each of the meanings herein respectively set forth.

"Bathing area" means any beach or water area designated by the department as a bathing area.

"Bicycle path" means any path maintained for bicycles.

"Bridle path or trail" means any path or trail maintained for persons riding on horseback.

"Camping Unit" means a tent, tent trailer, travel trailer, camping trailer, pick-up camper, motor homes or any other portable device or vehicular-type structure as may be developed, marketed or used for temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Department" means the Department of Conservation and Recreation.

"Foot path or trail" means any path or trail maintained for pedestrians or ~~handicapped~~ disabled persons.

"Motor vehicle" means any vehicle which possesses a motor of any description used for propulsion or to assist in the propulsion of the vehicle.

"Owner" means any person, firm, association, copartnership or corporation owning, leasing, operating, or having the exclusive use of a vehicle, animal or any other property under a lease or otherwise.

"Park" means, unless specifically limited, all designated state parks, parkways, historical and natural areas, natural area preserves, sites, and other ~~recreational~~ areas under the jurisdiction of the Department of Conservation and Recreation.

"Permits" means any written license issued by or under authority of the department, permitting the performance of a specified act or acts.

"Person" means any ~~natural person,~~ corporation, company, association, ~~joint stock association,~~ firm ~~or copartnership~~, an individual, proprietorship, partnership, joint venture, joint stock company, syndicate, business trust, estate, club, committee, organization, or group of persons acting in concert.

~~"Regulation" means regulations duly adopted by the Department of Conservation and Recreation.~~

4VAC5-30-20. Construction.

In the interpretation of the Virginia State Parks Regulations, their provisions shall be construed as follows: (i) any terms in the singular shall include the plural; (ii) any term in the masculine shall include the feminine and the neuter; (iii) any requirements or prohibition of any act shall, respectively, extend to and include the causing or procuring, directly or indirectly of such act; (iv) no provision hereof shall make unlawful any act necessarily performed by any law-enforcement officer as defined by § 9.1-101 of the Code of Virginia or employee of the department in line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the department; (v) any act otherwise prohibited by Virginia State Parks Regulations, provided it is not otherwise prohibited by law or local ordinance, shall be lawful if performed under, by virtue of and strictly within the provisions of a permit so to do, and to the extent authorized thereby, and (vi) this chapter are in addition to and supplement the state vehicle and traffic laws which are in force in all parks and which are incorporated herein and made a part hereof.

4VAC5-30-30. Territorial scope.

All Virginia State Parks Regulations shall be effective within and upon all state parks, historical and natural areas, natural area preserves, roads, sites, and other ~~recreational~~ areas in the Commonwealth which may be under the ~~jurisdiction~~ management or control of the Department of Conservation and Recreation and shall regulate the use thereof by all persons.

4VAC5-30-32. General.

Failure to comply with the Virginia State Parks Regulations, as well as other applicable laws and regulations, may result in revocation of permits, forfeiture of applicable prices paid, and prosecution.

4VAC5-30-40. Permits.

The department may issue a permit for activities otherwise prohibited in this chapter. A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holders or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative, whose action therein shall be final. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of

such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Parks Regulation.

Permit applications may be obtained through individual parks, the department website, or through the park central office. Permits may be filed electronically in a manner specified by the department, including, but not limited to, electronic mail or by completing any forms provided online by the department.

4VAC5-30-50. Flowers, plants, minerals, etc.

No person shall remove, destroy, cut down, scar, mutilate, injure, take or gather in any manner any tree, flower, fern, shrub, rock or plant, historical artifact, or mineral in any park unless a special permit has been obtained for scientific collecting. ~~Special permits may be obtained for scientific collecting.~~ To obtain a special permit for scientific collecting in a state park, a Research and Collecting Permit Application must be completed and provided to the department at:

Department of Conservation and Recreation

203 Governor Street, Suite 306

Richmond, Virginia 23219-2010.

To obtain a special permit for scientific collecting in a natural area or natural area preserve, a Research and Collecting Permit Application must be completed and provided to the department at:

Department of Conservation and Recreation

Division of Natural Heritage

217 Governor Street, Third Floor

Richmond, Virginia 23219.

4VAC5-30-70. Disposal of refuse, garbage, etc.

No person shall deposit in any part of the park any garbage, sewerage, refuse, waste, cigarette or cigar butts, vegetables, foodstuffs, boxes, ~~tin~~ cans, plastics, paper, or other litter or other waste material or obnoxious material, except in containers designed for such purposes.

4VAC5-30-90. ~~Disorderly conduct prohibited~~ Lawful orders.

No person shall disobey a lawful order of a ~~Virginia State Park manager, caretaker, ranger, or patrolman; nor commit a nuisance; nor use abusive, profane, or insulting language; nor unreasonably disturb or annoy others; be under the influence of intoxicants, do any act tending to or amounting to a breach of the peace nor conduct himself in any disorderly manner whatsoever~~ conservation officer.

4VAC5-30-100. ~~Gambling.~~ (Repealed.)

~~Gambling in any park is prohibited and no person shall bring into the park or have in his possession while there, any implement or device commonly used, or intended for gambling purposes.~~

4VAC5-30-110. ~~Intoxicating liquors or beverages.~~ (Repealed.)

~~No person shall be or become intoxicated, or under the influence of intoxicants, in public while in the confines of any park. Public display or use of beer, wine, whiskey or other intoxicating liquor or beverage or the containers thereof is prohibited.~~

4VAC5-30-120. Opening and closing hours.

No person except employees or officers of the department shall be allowed within the park between the hours of 10 p.m. and 6 a.m. except cabin guests and campers unless participating in special park ~~affiliated~~ sanctioned activities~~, hunting and fishing~~.

4VAC5-30-140. Picnic area.

Picnicking in any park is allowed only in the areas designated as picnic areas.

4VAC5-30-150. Camping.

A. Permit. Camping will be conducted only under permit~~, issued on the basis of a valid application, after payment of fee and at the campsite designated. Application for camping permit shall be made on the prescribed campsite application forms~~. A permit is obtained by completing a valid Virginia State Parks Camping Permit Form or Honor Camping Application and submitting payment in accordance with all applicable prices and payment policies. A camping permit can only be issued by the park management. Only an individual 18 years of age or older who is a member of and accepts responsibility for the camping party may be issued a camping permit. The act of placing a reservation through the state parks reservation center does not constitute a camping permit.

Camping may only be performed in strict accordance with the terms and conditions of the permit. Any violation of the permit by the permittee or any member of the party shall constitute grounds for permit revocation by the department, or by its authorized representative, whose action shall be final. In case of revocation of any permit, all moneys paid for or on account thereof shall at the option of the department be forfeited and retained by the department.

~~B. Registration. Registration by an adult, 18 years of age or over, who is a member of and accepts responsibility for, the camping party, is required before setting up camp.~~

~~C.~~ B. Occupancy. Occupancy of each campsite shall be limited to not more than six persons or one immediate family~~, except by special permission from designated park officials~~.

The term immediate family shall mean relatives living at the same common household of residence.

~~D.~~ C. ~~Number of Camping Units. No camping unit can be used except that which is shown in the campsite application.~~ Camping units, equipment, and vehicles. All camping units, equipment, and vehicles shall be placed within the perimeter of the designated campsite without infringing on adjoining campsites or vegetation. Where high impact areas have been designated, all camping units, equipment, and vehicles shall be placed within the defined borders of the high impact area.

~~E.~~ D. Camping ~~Periods~~ periods. No ~~Camping~~ camping shall be permitted in excess of 14 ~~consecutive days~~ nights within a 30-day period. ~~The minimum camping period shall be one day.~~ Park managers shall have the authority to increase the number of nights.

Check-in time shall be 4 p.m. ~~Check out~~ Check-out time is ~~4:00 p.m.~~ 3 p.m. Campers may be permitted to occupy campsites prior to 4 p.m., but no earlier than 8 a.m., if campsites are available. ~~No camping units, vehicles or other~~ Any personal property ~~shall be~~ left ~~or allowed to remain on~~ at the campsite after the ~~duration or termination of the permitted camping period~~ reservation period check-out time shall be removed by park staff at the owner's expense.

~~F.~~ E. Motor ~~Vehicles~~ vehicles. Only ~~one~~ two motor ~~vehicle~~ vehicles in addition to the camping unit allowed under subsection ~~D above may be~~ C of this section are permitted on a campsite ~~at any time~~ with no additional prices. All ~~other~~ motor vehicles ~~must~~ shall be parked ~~at~~ in the designated parking ~~areas~~ area of each campsite. Any additional vehicles beyond two are subject to daily parking prices and shall be parked at designated overflow parking areas.

~~G.~~ F. Visitors. ~~All campers, at the time of registration, shall inform the designated park official of the names of any visitors who are expected to arrive at the campsite during the the permitted camping period. No visitor shall be allowed at the campsite unless so identified~~. All visitors shall register on the visitors register. No visitor shall be allowed before ~~8:00 a.m.~~ 6 a.m. and all visitors must leave the campground area by ~~10:00~~ 10 p.m. All visitors shall be charged the appropriate daily parking or admissions prices prior to entering the park.

G. Quiet hours. Quiet hours in the campgrounds shall be from 10 p.m. to 6 a.m. Generators, amplified music, or other disturbances that can be heard outside the perimeters of the user's campsite are prohibited during the designated quiet hours.

H. Pets. Domestic and household pets are permitted in campgrounds only with payment of all applicable prices. Owners are responsible for cleaning up after their pets and for ensuring their pets do not disturb other campers. Horses and other livestock are not permitted unless facilities are specifically provided for them.

4VAC5-30-160. Cabins.

~~Cabin reservations are made for a minimum period of one week, and, when space is available, for a maximum period of two weeks. If a vacancy exists at the termination of the rental period, the occupant may extend his stay. Reservations begin on Monday and run until the following Monday.~~ Use of state park cabins shall only be permitted pursuant to established department regulations (4VAC5-36) and policy dealing with reservations, registration, occupancy, prices, length of stay, and rental period.

4VAC5-30-190. Boating.

Boating of any kind in a bathing area is prohibited ~~except such boating as is necessary to keep such areas properly protected and policed~~.

4VAC5-30-210. ~~Explosives.~~ (Repealed.)

~~No person shall bring into or have in any park any explosive or explosive substance.~~

4VAC5-30-220. Fires ~~and lighted cigarettes.~~

No person shall kindle, build, maintain or use a fire other than in places provided or designated for such purposes ~~except by special permit~~ in any park. Any fire shall be continuously under the care and direction of a competent person over sixteen years of age from the time it is kindled until it is extinguished. No person within the confines of any park shall throw away or discard any lighted match, cigarette, cigar, or other burning object. Any lighted match, cigarette, cigar, or other burning object must be entirely extinguished before being thrown away or discarded.

4VAC5-30-230. Smoking.

No person shall smoke in any structure or place in any park where smoking is prohibited. Smoking may be forbidden by the department or its authorized agent in any part of any park ~~when it is deemed the fire hazard makes such action advisable~~.

4VAC5-30-240. Hunting.

No person within the confines of any park, shall hunt, pursue, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have any wild bird or animal in his possession within the park, provided, however, that this regulation shall not apply in areas designated for hunting by the ~~Department of Conservation and Recreation~~ department. At such time as the department director deems it in the best interest of the safety and welfare of the public and other persons authorized to be in the area, he shall close the area to hunting ~~and post boundaries to that effect~~.

4VAC5-30-250. Fishing.

~~Fishing~~ The taking of fish by hook and line, the taking of bait fish by cast net, and crabbing by line and net is permitted in the designated areas in each park, the only stipulations

being that persons ~~fishing~~ taking fish by hook and line must have a state fishing license ~~where~~ required by law and comply with the applicable Department of Game and Inland Fisheries or Marine Resources Commission rules and regulations. This is intended to be a complete list of authorized fishing activities in parks and does not allow other activities requiring fishing licenses such as bow-fishing or the taking of amphibians, which are prohibited.

4VAC5-30-260. Animals at large.

No person shall cause or permit any animal owned by him, in his custody, or under his control, except an animal restrained by a leash not exceeding six feet in length, to enter any park, and each such animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property then in effect at the place where such stray animals may be seized. No animal shall be left unattended by its owner in any park at any time, except for animals in designated stables. Animals shall not be allowed in bathing areas under any circumstances, except for service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia.

4VAC5-30-270. Sports and games; when permitted.

No games or athletic contest shall be allowed in any park except in such places as may be designated therefor.

4VAC5-30-274. Foot path or trail use.

Persons shall only use paths, trails, or other designated areas in any park. No person shall engage in an activity expressly prohibited by a trail safety sign.

4VAC5-30-276. Bicycle path use.

No person shall use a bicycle or similarly propelled devices in any area other than designated bicycle paths in any park. No person shall engage in an activity expressly prohibited by a trail safety sign.

4VAC5-30-280. ~~Horses~~ Bridle path use.

No person shall use, ride, or drive a horse or other animal in any park except ~~to, from, or~~ along a bridle path, to or from a parking area associated with such bridle path, or other designated area. No person shall engage in an activity expressly prohibited by a trail safety sign.

4VAC5-30-300. Parking.

~~A.~~ No owner or driver shall cause or permit a vehicle to stand anywhere in any park outside of designated parking spaces, except a reasonable time in a drive to receive or discharge passengers.

~~B. No owner or driver shall cause or permit a vehicle to stand in any space designated for use by the handicapped in any park unless the vehicle displays a license plate or decal issued by the Commissioner of the Department of Motor Vehicles of Virginia under authority of § 46.2-731 or § 46.2-739 of the Code of Virginia, or a similar identification issued by similar authority in some other state or The District of Columbia.~~

4VAC5-30-310. Obstructing traffic.

No person shall cause or permit a vehicle to obstruct traffic by unnecessary stopping in any park.

4VAC5-30-320. ~~Speed limit.~~ (Repealed.)

~~Rate of speed in excess of twenty-five miles per hour is prohibited.~~

4VAC5-30-330. Excessive loads.

No person shall operate an excessively loaded vehicle anywhere in any park. The determination of whether a load is excessive will be made by ~~the~~ park ~~manager~~ management and will be based upon the load and the condition of the road.

4VAC5-30-340. Commercial enterprises.

No person shall, in any park, ~~without a permit,~~ sell or offer for sale, hire, lease or let out, any object or merchandise, property, privilege, service or any other thing, or engage in any business or erect any building, booth, tent, stall or any other structure whatsoever for a commercial purpose.

No person to whom property of any park has been entrusted for personal use shall hire, lease, let out, or sell the same to any other person.

4VAC5-30-350. ~~Photographs.~~ (Repealed.)

~~No person shall, without a permit, take photographs or moving pictures within the limits of any park for the purpose of selling the negatives thereof or the prints therefrom.~~

4VAC5-30-360. Commercial vehicles.

No person shall operate a bus, taxicab or other commercial vehicle designed or used for the transportation of passengers or property within any park ~~without a permit~~, except for the arranged pickup or delivery of park users.

4VAC5-30-370. Advertising.

No sign, notice or advertisements of any nature shall be erected or posted at any place within any park, nor shall ~~any musical instrument, radio, talking machine, or drum be operated or~~ any noise be made for the purpose of attracting attention to any exhibition of any kind ~~without written permission from the Department~~.

4VAC5-30-380. Meetings and exhibitions.

No person shall in any park erect any structure, stand or platform, hold any meeting, or exhibition, perform any ceremony, or make any speech~~,~~ or address ~~except by permit~~ if it limits or impacts the ability of the general public to utilize the park for the purposes for which is was established, may cause injury or damage to park resources, or impairs the operation of the park facilities or delivery of services.

4VAC5-30-390. Alms and contributions.

No person shall within any park solicit alms or contributions for any purpose~~, without special permission from the department director~~.

4VAC5-30-400. Aviation.

No person shall voluntarily bring, land or cause to descend or alight within or upon any park, any airplane, remote control model aircraft, flying machine, balloon, parachute or other apparatus for aviation ~~except under permit~~. "Voluntarily" in this connection shall mean anything other than a forced landing.

4VAC5-30-410. Importation of firewood.

A. The Director of the Department of Conservation and Recreation may prohibit the importation of firewood or certain types of firewood into any park or allow such entry only under specified conditions when such firewood may be infected or infested with a species of concern. Any firewood transported to the park by a person found to be in violation of such prohibition shall be confiscated and destroyed. Should any person charged under this section be found not guilty, the person shall be reimbursed for only the cost of the firewood.

B. When the director makes a written determination to implement subsection A of this section, the following minimum requirements apply:

1. Such determination shall be posted to the department's website and posted at the park where applicable.

2. Firewood to be used by any person within a park must be purchased from the park, must be proven to be from a certified source in accordance with subdivision 3 of this subsection if transported to the park, or may be collected from within the confines of the park in accordance with park policy. The department may allow for the sale or distribution of firewood within the park with prior written agreement that it has been treated in accordance with subdivision 3 of this subsection. Firewood includes all wood, processed or unprocessed, meant for use in a campfire. Such ban shall not include scrap building materials, such as 2x4s; but may extend to wood pallets as determined by the director.

3. Firewood certified to be sold and distributed within the park by a firewood dealer shall be subject to at least one of the following conditions:

a. Exclude all ash tree material from the firewood production area. Dealers will have to demonstrate ability to identify and separate firewood species.

b. Remove bark and outer half inch of sapwood off of all nonconiferous firewood.

c. Kiln dry all nonconiferous firewood to USDA specifications.

d. Heat treat all nonconiferous firewood to USDA specifications.

e. Fumigate all nonconiferous firewood to USDA specifications.

f. Offer conclusive proof demonstrating to the satisfaction of the department that the origin of the wood was from a noninfected area.

g. Offer conclusive proof demonstrating to the satisfaction of the department that the wood containing the infecting or infesting species of concern has been properly treated and the species is controlled by an alternative control mechanism.

The director may eliminate or restrict conditions offered in this subsection as determined to be necessary to properly address the infecting or infesting species of concern to the satisfaction of the department.

4VAC5-30-420. Release of animals or wildlife on park property.

No person shall release animals or wildlife captured or propagated elsewhere into any park.

4VAC5-30-422. Feeding wildlife prohibited.

No person shall feed wildlife in any park, except for park sponsored programmatic activities.

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 (4VAC5-30)

Natural Area Preserve Research and Collecting Permit Application, DCR 199-003 (11/07).

Research and Collecting Permit Application, DCR 199-043 (12/00).

Cabin & Camping Permit (1/10).

VA.R. Doc. No. R10-1568; Filed January 6, 2010, 11:45 a.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-171. Regulations Relating to Private Security Services (amending 6VAC20-171-10, 6VAC20-171-20, 6VAC20-171-30, 6VAC20-171-50**

through 6VAC20-171-320, 6VAC20-171-350 through 6VAC20-171-400, 6VAC20-171-420 through, 6VAC20-171-560; adding 6VAC20-171-71, 6VAC20-171-72, 6VAC20-171-111, 6VAC20-171-115, 6VAC20-171-116, 6VAC20-171-117, 6VAC20-171-135, 6VAC20-171-305, 6VAC20-171-308, 6VAC20-171-375, 6VAC20-171-376, 6VAC20-171-395; repealing 6VAC20-171-245, 6VAC20-171-430, 6VAC20-171-440).

Statutory Authority: § 9-182 of the Code of Virginia.

Public Hearing Information:

May 20, 2010 - 9 a.m. - General Assembly Building, 9th and Broad Streets, House Room D, Richmond, VA

Public Comment Deadline: April 2, 2010.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Basis: The legal authority to review, amend, or revise regulations relating to private security services is found in § 9.1-141 of the Code of Virginia. Additionally, this review is in accordance with Executive Order 36 (2006).

Purpose: The purpose of this regulatory action is a comprehensive review and amendment of existing regulations. This review and recommended amendments is based on legislative actions that require development of regulations for locksmiths as well as further development of regulations relating to detective canine handlers. In addition to recent legislative actions, a comprehensive review will amend and revise the rules mandating and prescribing standards, requirements and procedures that serve to protect the citizens of the Commonwealth from unqualified, unscrupulous, and incompetent persons engaging in the activities of private security services. This regulatory action is essential to protect the health, safety, and welfare of citizens who utilize the various categories of private security services by establishing the regulatory requirements for locksmiths and detector canine handlers. These regulations ensure they have a criminal background check, meet minimum training standards, and are held to prescribed standards of conduct. Knowing that locksmiths and detector canine handlers have met these regulatory requirements increases the public trust and brings credibility to the industry. The revised firearms training requirements directly increase the level of competence for individuals who utilize firearms in a private security defined field. The additional training should have a direct impact in the reduction of accidental discharges of firearms.

Substance: While all areas of the regulations will be subject to this comprehensive review, the substance of this review will be to include a permanent regulatory scheme for locksmiths and detector canine handlers, examiners, and teams operating within the Commonwealth. This review will focus on reevaluating the existing licensure, registration, certification and training requirements, procedures, fees, administrative requirements, and standards of conduct.

6VAC20-171-10 – Definitions: Definitions have been inserted or amended in regard to the regulatory program established for locksmiths and detector canine handlers and examiners in accordance with § 9.1-138 et seq. of the Code of Virginia. Other amendments to the definitions are based on terminology related to firearms training and variances in methods of conducting training.

6VAC20-171-20 – Fees. Amendments to the fee structure include an option for businesses to obtain a one year or two year initial license, an increase in the firearms endorsement fee, an additional category fee for training schools and instructors, and a separation of certification applications fees and required regulatory compliance training fees. The electronic roster submittal fee has been deleted and instructor training development fees have been removed from the regulation. There is also a new manual processing service fee for applications not submitted by available electronic methods. Other amendments involve a restructuring of the fee schedule for clarity.

6VAC20-171-30 – Fingerprint processing. Amendments are included to reflect the current criminal history records search process utilized by the department.

6VAC20-171-50 – Initial business license application. The amendments incorporate the new categories of locksmith and detector canine business as well as clarify what constitutes a legal entity change thus requiring a new license.

6VAC20-171-70 – Compliance agent. This section has been amended to clarify the application process and requirements for a compliance agent. Two new sections have been inserted (6VAC20-171-71 – Compliance Agent Certification Renewal Requirements and 6VAC20-171-72 – Compliance Agent Regulatory Compliance Training Requirements). The amendments do not make any major changes to the requirements but provide clarity for the process and make the process inclusive in one article of the regulations compared to being spread throughout the document.

6VAC20-171-80 to 6VAC20-171-90 – Training school certification. The proposed regulations establish the categories of training in which schools will be required to submit a category of training fee depending on the number of training categories provided by the training school. Language is included to clarify what constitutes a legal entity change.

6VAC20-171-100 to 6VAC20-171-111 – Instructor Certification. Amendments include a new category of training fee, range qualification requirements for firearms instructors, and new training requirements to include regulatory compliance training and continuing education. Inserting a

new section 6VAC20-171-111 provides clarity and makes the process inclusive in one article of the regulations.

6VAC20-171-115 to 6VAC20-171-117 – Detector Canine Handler Examiner Certification. The new sections establish the initial, renewal, and training requirements for certification.

6VAC20-171-120 to 6VAC20-171-130 – Private Security Services Registration. The amendments include the new categories of registration for locksmiths and detector canine handlers and include the requirement of a photo submission by the applicant.

6VAC20-171-135 – Firearms endorsements. This new section clarifies the process of obtaining a firearms endorsement and makes the process inclusive within one article of the regulations. It also establishes a timeframe in which retraining must be taken.

6VAC20-171-180 – Reinstatement. Amendments to the reinstatement procedures have been inserted that allow a company to continue to operate during the reinstatement period and establishes continued authority by the department.

6VAC20-171-190 – Renewal extension. Amendments include a broader description of emergency temporary assignments to include purposes of natural disaster, homeland security, or document threat. Language has been inserted that allows the department to waive the requirement of submittal prior to expiration with justification and establishes the timeframe for which an exemption may be issued.

6VAC20-171-200 – Denial, probation, suspension and revocation. Includes an amendment in which the last known employing business or training school will be notified if an employee of the company is subject to disciplinary action by the department.

6VAC171-220 to 6VAC20-171-280 – Administrative Requirements and Standards of Conduct. Amendments reflect new administrative requirements and standards of conduct for businesses, compliance agents, training schools, training school directors, and instructors. These amendments include the removal of a provision that a business license or training school certification is null and void due to a lapse of insurance and inserts a clause that each day of uninsured activity would be construed as an individual violation. New provisions have been inserted for reporting requirements upon termination of a compliance agent or training school director. Administrative requirements to maintain a use of force policy, records for employees carrying intermediate weapons, and records in regard to detector canine handler teams have been added for businesses.

Additional standards of conduct have been included to prohibit acting as an ostensible licensee for undisclosed persons; providing false or misleading information; refusing to cooperate with an investigation; or for providing materially incorrect, misleading, incomplete, or untrue information to the department.

A provision has been added requiring regulated individuals to report within 10 days having been arrested for a crime in any jurisdiction as well as establish standards of conduct pertaining to authorized access to the department's licensing database.

Additional reporting requirements have been added for training schools and school personnel regarding range qualification failures.

Other minor amendments ensure concise language for clarity and consistency.

6VAC20-171-300 – Private security services training session. Language has been deleted that required schools to submit sessions and rosters within a specific time period and a provision has been added that details the information a school will be required to capture on a training completion form.

6VAC20-171-305 – On-line service training programs. This new section establishes the requirements for a school to offer on-line in-service training sessions.

6VAC20-171-308 – Detector Canine Handler Examiners. This new section establishes the administrative requirements and standards of conduct for detector canine handler examiners.

6VAC20-171-310 through 6VAC20-171-320 – Registered personnel administrative requirements and standards of conduct. Amendments include a provision for requiring registered personnel to report within 10 days having been arrested for a crime in any jurisdiction and the prohibition of having an arrest that the prima facie evidence would indicate the propensity for harming the public. The proposed regulations add a requirement that personnel who carry or have access to a patrol rifle while on duty must have written authorization from their employer and include additional standards of conduct to prohibit providing false or misleading information; refusing to cooperate with an investigation; or providing materially incorrect, misleading, incomplete, or untrue information to the department.

6VAC20-171-350 – Entry level training. The training requirements have been changed to separate private security orientation training into its own block of training versus being incorporated in each entry-level mandated training session. The entry-level training has been restructured to include specific courses and hours for clarity. In addition, the minimum course and hour requirements for locksmiths and detector canine handlers have been added. The compulsory minimum training standards for armed security officers has increased from 40 hours to 50 hours due to an increase in firearms training hours and the hours for shotgun entry-level training have increased from two to four hours.

The course content has been amended to reflect the block section for private security orientation, minor changes to the content for armed security officer classroom training, and the hour requirements for each individual section of a course has been removed. The proposed regulations reflect the course content for locksmiths and detector canine handler examiners and all training provisions for compliance agents has been deleted and added to 6VAC20-171-70 through 6VAC20-171-72.

6VAC20-171-360 – In-service training. The amendments include in-service training requirements for locksmiths and detector canine handlers and combines the course content and minimum hour requirements within one section.

6VAC20-171-365 through 6VAC20-171-400 – Firearms training. The entry-level firearms training compulsory minimum training standards have been amended. An enhanced firearms training for armed security officers/couriers and personal protection specialist has been inserted (6VAC20-171-375) and reflects an increase of 10 hours of training compared to the entry-level firearms training for all other armed registered categories. The entry-level handgun range qualification has been moved to a new section for clarity purposes (6VAC20-171-376) and a new course of fire has been inserted.

The advanced firearms training compulsory minimum training standards for personal protection specialists have been amended. The topics have been amended to address concealed carry laws and use of force. The hours are reduced due to the removal of duplicate training objectives already addressed in the basic firearms training requirements which is a prerequisite for the advanced handgun training.

The shotgun minimum training standards and course of fire have been amended, which increases the classroom training by two hours.

A new section has been created to address entry-level patrol rifle training (6VAC20-171-395) and includes the classroom training and course of fire.

Amendments to firearms retraining increases the classroom hours to four hours for all armed registered personnel with the exception personal protection specialists who must complete advanced firearms retraining. This is a new requirement for the armed security officers.

6VAC20-171-430-440 – Entry-level security canine handler training. This section has been repealed and the provisions are now included in the entry-level and in-service training sections for registered personnel under 6VAC20-171-350 and 6VAC20-171-360.

6VAC20-171-500 – Disciplinary action; sanctions; publication of records. An additional sanction - the use of conditional agreements - has been added to the list of sanctions that the department may impose for a violation or noncompliance.

Issues: The primary advantage of implementing the new provisions presented in the proposed regulation is to provide necessary public protection tasked through existing statutes. Advantages to the public and the Commonwealth are to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in activities of private security services in the Commonwealth. The goal of these amended regulations is to ensure that (i) eligible individuals in the private security services industry receive compulsory minimum training and abide by established standards of conduct and (ii) individuals with certain criminal history records, or who are in violation of rules established for public safety, are prohibited from performing private security services.

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

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

Summary of the Proposed Amendments to Regulation. Pursuant to requirements for periodic review, the Board of Criminal Justice Services (Board) proposes to amend its Regulations Relating to Private Security Services. Amongst the substantive changes in this regulatory action, the Board proposes to replace emergency regulations that govern locksmiths (pursuant to Chapter 638 of the 2008 Acts of the Assembly) and add new regulations for detector canine handlers and detector canine handler examiners (pursuant to Chapter 470 of the 2004 Acts of the Assembly). The Board also proposes to:

• Rewrite firearms endorsement requirements to include three levels of handgun training and increase training requirements for security officers/couriers to include 10 more hours of firearms training,

• Increase the hours of training needed for a shotgun endorsement, and the hours needed for renewal of each type of firearms endorsement, from two to four,

• Add new requirements for patrol rifle training,

• Allow businesses that are applying for initial licensure to choose to be licensed for one or two years before they must renew,

• Add a $20 manual processing fee for applications not submitted through available electronic means,

• Increase the firearms endorsement fee from $10 to $30 per year and issue a separate firearm endorsement card,

• Charge training schools a $50 fee for each training category rather than the flat $500 fee they currently pay for approval of training materials and charge instructors $10 per category for each addition certification category,

• Decrease fees for initial compliance agent certification and compliance agent certification renewal,

• Require instructors and examiners to complete regulatory compliance entry level and in-service training (fees added for these categories) and

• Require regulated entities to report within 10 days when they are arrested for a crime in any jurisdiction.

Result of Analysis. The benefits likely exceed the costs for some of these proposed changes. The costs likely exceed the benefits for at least one of these proposed changes. For several other regulatory changes, there is insufficient information to ascertain whether benefits outweigh costs. All benefits and costs are discussed below.

Estimated Economic Impact. Pursuant to Chapter 638 of the 2008 Acts of the Assembly, the Board promulgated emergency regulations for registration of locksmiths in July 2008. The Board now proposes permanent regulation to replace the emergency regulations that will expire on December 30th of this year.

Under these proposed regulations, locksmiths will have to complete 20 hours of initial training (2 hours of training on applicable Virginia law and 18 hours on subject matter training), pass an exam and pay a $25 initial registration fee for a registration that is valid for two years. Fees for initial training range between $200 and $325, depending on which private training school is offering it. Every biennium, registered locksmiths will have to complete four hours of continuing education and pay a $20 fee to renew their registration. Fees for continuing education range between $89 and $125. As provided by Chapter 638, locksmiths who have actively and continuously provided locksmith services for two or more years prior to July 1, 2008 are exempt from the initial training requirements.

In order to get an initial business license, locksmith businesses will have to 1) provide fingerprints for each principal owner and supervisor of the applying business ($50 per fingerprint card), 2) show evidence of a surety bond of at least $100,000 or a liability insurance policy with minimum coverages of $100,000 and $300,000, 3) complete an irrevocable consent form for the Department of Criminal Justice Services (DCJS) to serve as service agent for all actions filed in any court in the Commonwealth, 4) designate an employee as a compliance agent who will make sure the business complies with applicable laws and regulations and 5) pay a fee of either $550 for an initial license valid for one year or $800 for an initial license valid for two years. This fee covers business licensure for one category; each additional category adds $50 to the cost of the business license. Businesses will have to pay $500 for renewal of licensure at the time their initial license expires.

DCJS reports that the legislature recently required registration of locksmiths in order to protect the public "from incompetent or unqualified persons" who were in the locksmith trade. To the extent that regulation achieves this goal, the public will benefit from locksmiths being required to register. Locksmiths who choose to become registered will benefit from a likely decrease in the number of individuals who practice this trade in direct competition with them. It is not entirely clear that these benefits outweigh the costs, both direct and indirect, that will be accrued by licensed locksmith businesses and registered locksmiths. Direct costs include fees for licensure and/or registration and fees for classes. Indirect costs include the value of time spent attending classes and studying for and taking exams. In particular, the costs of business licensure may prove too onerous for some single proprietor locksmiths. The number of individuals who work as locksmiths is very likely to fall on account of licensure requirements.

Currently, these regulations do not include provision for registration of detector canine handlers and certification of detector canine handler examiners. Pursuant to Chapter 470 of the 2004 Acts of the Assembly, the Board now proposes to add provisions that will govern registration, certification and licensure for these groups.

The Board proposes to require detector canine handlers to complete 160 hours of initial training (2 hours of training on applicable Virginia law and 158 hours on subject matter training), pass an exam and pay a $25 for initial registration. DCJS reports that this training will cost approximately $1,000 per 40 hour week of training. Detector canine handlers who have already completed training that would be equivalent to that required by the Board will be able to pay an entry level partial-training exemption fee of $25 and the initial registration fee in order to gain their registration. DCJS staff believes that most individuals who would seek registration already have national certification that is at least equivalent to the initial training required in these proposed regulations.

These training requirements seem to be approximately equivalent to what is required for police detector canine handlers. Given the nature of the relationship that must be fostered between a canine and its handler, and the repetition of exercises that is necessary to teach an animal to reliably perform a task, the benefits of requiring training before registration likely outweigh the costs of that training (and registration).

If detector canine handlers are business proprietors rather than employees of a business, they will need to meet the Board's requirements for business licensure (see explanation of locksmith business licensure above) and must complete regulatory compliance agent certification training ($50 initial certification fee). These individuals will have to renew their licenses at the end of the initial licensure term ($500 fee) and will have to complete compliance agent in-service (continuing education) every two years ($25 fee).

Under the Board's proposal, detector canine handler examiners must 1) be at least 18 years old, 2) have a high school diploma or GED, 3) have a minimum of five years of experience as a detector canine handler and a minimum of two years experience as a detector canine trainer, 4) be certified as a detector canine handler examiner by a Board recognized national certification organization, a division of the United States military or other formal entity or by a certified DCJS private security services detector canine handler examiner, 5) pass an exam, 6) provide fingerprints to DCJS ($50 fee) and 7) pay the initial certification fee of $50 in order to get a certification that is valid for two years. Within 12 months of initial certification, examiners will have to satisfactorily complete regulatory compliance training ($75 fee). In order to renew certification, these examiners must either have maintained certification under these regulations or complete 16 hours of continuing education before they recertify every two years (application fee $25) and complete regulatory compliance in-service training ($50 fee). No costs for continuing education are available but, given the number of hours required for those who have not maintained their certification, these costs will likely be more than several hundred dollars.

To the extent that requiring detector canine handler examiners to be certified improves the quality of the services they offer, the public will benefit from these regulatory changes. There is insufficient information to gauge whether these benefits outweigh the costs listed above.

Nothing in these proposed regulations would explicitly prohibit examiners from forming a business rather than working for another business or training school. There does appears to be an oblique assumption, in the regulation's Administrative Requirements and Behavior Standards, that examiners will be working for a business or training school licensed by the Board. These regulations as currently proposed would appear not to require examiner businesses to be licensed by the Board.

Current regulations include provision for two levels of firearms training in order to gain a firearms endorsement. All registrants except for personal protection specialists must currently complete entry-level handgun training (14 hours training). Personal protection specialists must currently complete both entry-level handgun training and advanced handgun training (24 hours training) in order to gain a firearms endorsement. An endorsement that allows the registrant to use a shotgun requires two extra hours of training. There currently is no specifically required training for patrol rifles.

The Board proposes to modify these firearms training requirements so that handgun training is separated into three classes. All registrants but armed security officers, armed couriers and personal protection specialists that are seeking a firearms endorsement must complete fundamental handgun training (14 hours training). Armed security officers and armed couriers who are seeking a firearms endorsement have to complete basic handgun training (24 hours training). Personal protection specialists must complete both basic and advanced handgun training (14 hours training). The Board proposes to increase the training required to carry a shotgun from two to four hours (and increase the hours needed annually to renew an endorsement from two to four). The Board also proposes to add a 24 hour training requirement for patrol rifles.

These changes will increase the hours of handgun training needed by armed security officers and armed couriers for firearms endorsement by ten but will leave the hours of handgun training needed for other registrants unchanged. Any individuals who will seek an initial shotgun endorsement in the future, or will seek to renew any category of endorsement, will see the hours of training needed double from two to four hours. Any individuals who have been able to carry patrol rifles under current endorsement requirements will now have two pay for, and complete, 24 extra hours of training.

Estimates found online for firearms training indicate that training for each category of firearm will likely cost between $100 and $200 (but will likely be less for the additional two hours of retraining per category that will be required). Registrants will incur direct costs for additional training as well as indirect costs for the time spent on training. DCJS staff reports that the Board believes additional training for armed security officers and armed couriers is needed to ensure the safety of the public that these individuals work around. There is insufficient information to ascertain whether the benefit of additional public safety outweighs the cost of the 10 extra training hours required.

The Board proposes many more hours of training for the additional patrol rifle endorsement than it does for the additional shotgun endorsement. It also proposes to require a higher accuracy for range qualification than is required for either handguns or shotguns (85% versus 75%-79% and 70% respectively). The differential 20 hours of classroom training would likely only be justified if there was no carryover value from entry-level handgun training, to patrol rifle training, that could be assumed to exist for the required shotgun training (or if patrol rifles are much harder weapons to learn and operate). Although the Board has relaxed the range standard for patrol rifles from the initially proposed 100% accuracy, this standard still exceeds the standard imposed by surveyed local police departments (which ranged between 70% and 80%). Because the Board is imposing much more stringent standards for patrol rifles than other weapons, costs likely outweigh benefits for these proposed changes.

Currently, private security firms pay $800 for a business license that is valid for two years and $500 for renewal of that license every two years, thereafter. The Board proposes to allow firms the option of getting an initial license for $550

that will be valid for a year or paying $800 for a two year license. The biennial license renewal fee would remain $500. While the average annual cost over time would be the same no matter which initial license is chosen, firms will benefit from the ability to defer costs. The proposed change will give firms greater flexibility to plan expenses.

The Board proposes to add a $20 fee for applications that are not submitted through available electronic means and to increase the firearms endorsement fee from $10 to $30. The manual processing service fee is being proposed to encourage applicants to use Board resources that are less costly and more efficient. Since the fee will only apply if there are available electronic submission means, regulated entities are unlikely to incur this cost unless they feel that they benefit from doing so. The Board is proposing the fee increase for firearms endorsement because they intend to start issuing a separate (wallet card) form rather than adding the endorsement to an individual's registration certificate. Since endorsements and registrations are not valid for the same length of time, there is benefit is separating them.

Currently, training schools pay a fee of $800 fee for initial licensure and a fee of $500 for electronic roster submittal authorization. The Board proposes to eliminate the electronic roster submittal authorization and instead charge training schools a $50 fee for each category of training offered past the first one (which is included in the licensure fee). There are eight categories of training so training schools would incur costs of only $350 if they taught all categories. Training schools will save between $150 and $500 on account of this proposed regulatory change.

Similarly, the Board proposes to cut the fees for instructor certification and compliance agent certification in half and implement an instructor certification category fee of $10. Initial instructor certification will decrease from $100 to $50 and instructor certification renewal will decrease from $50 to $25. Instructors will pay a $10 fee for each training category past the first for which certification is sought. Initial compliance agent certification will also decrease from $100 to $50 and compliance agent renewal will decrease from $50 to $25 but training will no longer be included in these fees. Compliance agent certification and training are being separated because private firms can now offer DCJS training online. Compliance agents will get a net benefit from this change only if training costs do not exceed what they will be saving in certification fees. This proposed change will likely save most instructors money.

Current regulation require registrants and licensed businesses to report to the Board within 10 days if they, or any principal, owner or employee, are convicted, plead guilty or nolo contendere, of any crime. The Board proposes to also require that all arrests be reported. DCJS reports that the Board wants to know if its regulated entities are arrested for any crimes that might indicate that they are a danger to the public. Affected entities will likely incur some reporting costs and will also lose some of the privacy they currently enjoy. The costs of this proposed requirement could likely be minimized if the Board only required entities to report arrests for crimes that would give the Board cause to take disciplinary action.

Businesses and Entities Affected. These proposed changes will affect all entities that are subject to the Regulations Relating to Private Security Services. DCJS reports that these entities include 2,000 private security services businesses, 41,000 individual registrants (9,750 of which have firearms endorsements), 2,416 compliance officers, 488 instructors and 128 private security services training schools.

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

Projected Impact on Employment. The number of locksmiths practicing in the Commonwealth will likely be smaller on account of the costs imposed by these proposed regulations.

Effects on the Use and Value of Private Property. The value of locksmith businesses will likely decrease on account of these proposed regulations.

Small Businesses: Costs and Other Effects. Small business locksmiths, detector canine handlers and detector canine handler examiners will incur costs for initial registration, registration renewal, Board business licensure and business licensure renewal as listed above. Armed security officers and armed couriers will incur costs for completing 10 extra hours of firearms training, and two extra hours of firearms retraining (for each category of firearm). Instructors and detector canine handler examiners will incur costs for regulatory compliance training.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Instead of requiring instructors and examiners to complete a regulatory compliance course and then pass a test, the Board might allow these entities to just take the test. The Board might also allow these entities to attest on their applications that they have read and understand relevant regulations and laws, as is allowed by several other regulatory Boards in the Commonwealth. The Board also might consider alternate, less expensive, requirements for private security businesses where the registrant is the only employee.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the

regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services, Office of Regulatory Affairs, concurs with the economic impact analysis as reviewed by the Department of Planning and Budget.

Summary:

The proposed regulation establishes a licensure, registration, and certification process for locksmiths, detector canine handlers, and detector canine handler examiners. The regulation establishes a regulatory fee structure; compulsory minimum entry-level training standards, including firearms training and qualifications; standards of conduct; and administration of the regulatory system. These regulations replace emergency regulations in effect for the locksmith industry.

Part I
Definitions

6VAC20-171-10. 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.

"Alarm respondent" means a natural person who responds to the signal of an alarm for the purpose of detecting an intrusion of the home, business or property of the end user.

"Armed" means a private security registrant who carries or has immediate access to a firearm in the performance of his duties.

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Assistant ~~training~~ school director" means a certified instructor designated by a private security training school director to submit training school session notifications and training rosters and perform administrative duties in lieu of the director.

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

"Business advertising material" means display advertisements in telephone directories, letterhead, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used primarily to summon aid for other emergencies.

"Certification" means ~~a~~ the method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools, private security services instructors, ~~or~~ compliance agents, or certified detector canine handler examiners.

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards.

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Classroom training" means instruction conducted by an instructor in person to students in an organized manner utilizing a lesson plan.

~~"Combat loading" means tactical loading of shotgun while maintaining coverage of threat area.~~

"Compliance agent" means a natural person who is an owner of, or employed by, a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with all applicable requirements as provided in § 9.1-139 of the Code of Virginia.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other

papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Cruiser safe" means the chamber is empty, the action of the shotgun is closed and locked, and magazine tube is loaded.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

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

"Detector canine" means any dog that detects drugs or explosives.

"Detector canine handler" means any individual who uses a detector canine in the performance of private security services.

"Detector canine handler examiner" means any individual who examines the proficiency and reliability of detector canines and detector canine handlers in the detection of drugs or explosives.

"Detector canine team" means the detector canine handler and his detector canine performing private security duties.

"Director" means the chief administrative officer of the department.

~~"Electronic roster submittal" means the authority given to the training director or assistant training director of a private security training school, after they have submitted an application and the required nonrefundable fee, to submit a training school roster to the department electronically through the department's online system.~~

"Electronic images" mean an acceptable method of maintaining required documentation for private security services licensed businesses and certified training schools through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; (ii) respond to or cause a response to electronic security equipment for an end user; or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security employee" means a natural person who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices, including burglar alarms or holdup alarms or cameras used to detect intrusion, concealment or theft to safeguard and protect persons and property. This shall not include tags, labels, and other devices that are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.

"Electronic security sales representative" means a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means a natural person who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.

"Employed" means an employer/employee relationship where the employee is providing work in exchange for compensation and the employer directly controls the employee's conduct and pays taxes on behalf of the employee. The term "employed" shall not be construed to include independent contractors.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Engaging in the business of providing or undertaking to provide private security services" means any person who solicits business within the Commonwealth of Virginia through advertising, business cards, submission of bids, contracting, public notice for private security services, directly or indirectly, or by any other means.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in this chapter.

"Firearms training verification" means verification of successful completion of ~~either~~ initial or retraining requirements for handgun, ~~or~~ shotgun, or patrol rifle training~~, or both~~.

"Firm" means a business entity, regardless of method of organization, applying for ~~a~~ an initial or renewal private security services business license or ~~for the renewal or reinstatement of same~~ private security services training school certification.

"Incident" means an event that exceeds the normal extent of one's duties.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include but are not limited to baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less-lethal weapons as defined by the department.

"Job-related training" means training specifically related to the daily job functions of a given category of registration or certification as defined in this chapter. Certifiable job-related training may include a maximum of one hour of instruction dedicated to the review of regulations.

"Key cutting" means making duplicate keys from an existing key and includes no other locksmith services.

"License number" means the official number issued to a private security services business licensed by the department.

"Licensed firm" means a business entity, regardless of method of organization, which holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

~~"Locksmith security equipment" means mechanical, electrical or electro-mechanical locking devices for the control of ingress or egress that do not primarily detect intrusion, concealment and theft.~~

"Locksmith" means any individual that performs locksmith services, or advertises or represents to the general public that the individual is a locksmith even if the specific term locksmith is substituted with any other term by which a reasonable person could construe that the individual possesses special skills relating to locks or locking devices, including use of the words lock technician, lockman, safe technician, safeman, boxman, unlocking technician, lock installer, lock opener, physical security technician, or similar descriptions.

"Locksmith services" mean selling; servicing; rebuilding; repairing; rekeying; repining; changing the combination to an electronic or mechanical locking device; programming either keys to a device or the device to accept electronic controlled keys; originating keys for locks or copying keys; adjusting or installing locks or deadbolts, mechanical or electronic locking devices, egress control devices, safes, and vaults; or opening, defeating or bypassing locks or latching mechanisms in a manner other than intended by the manufacturer with or without compensation for the general public or on property not his own nor under his own control or authority.

"Official documentation" means personnel records; DD214; copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"On-line training" means training approved by the department and offered via the Internet or an Intranet for the purpose of remote access on-demand or long distance training that meets all requirements for compulsory minimum training standards.

"Open breach loading" means a method of loading or reloading an empty shotgun with the bolt open.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Personal protection specialist" means any natural person who engages in the duties of providing close protection from bodily harm to any person.

"Physical address" means the location of the building that houses a private security services business or training school, or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation Commission, board member of the association, or partner of a licensed firm or applicant for licensure.

"Private investigator" means any natural person who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security

canine handlers, security canine teams, detector canine handlers, detector canine teams, alarm respondents, locksmiths, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security employee, electronic security sales representative, electronic security technician or electronic security technician's assistant.

"Private security services instructor" means any natural person certified by the department to provide mandated instruction in private security subjects for a certified private security services training school.

"Private security services registrant" means any qualified individual who has met the requirements under Article 6 (6VAC20-171-120 et seq.) of Part III of this chapter to perform the duties of alarm respondent, locksmith, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, electronic security technician's assistant, personal protection specialist, private investigator, security canine handler, detector canine handler, unarmed security officer or armed security officer.

"Private security services training school" means any person certified by the department to provide instruction in private security subjects for the training of private security services business personnel in accordance with this chapter.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

"Registration" means a method of regulation which identifies individuals as having met the minimum requirements for a particular registration category as set forth in this chapter.

"Registration category" means any one of the following categories: (i) unarmed security officer and armed security officer/courier, (ii) security canine handler, (iii) armored car personnel, (iv) private investigator, (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, ~~or~~ (ix) electronic security technician, ~~or~~ (x) electronic ~~security~~ technician's assistant, (xi) detector canine handler or (xii) locksmith.

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved department procedures and certification guidelines. "Security canine" shall not include detector dogs.

"Security canine handler" means any natural person who utilizes his security canine in the performance of private security duties.

"Security canine team" means the security canine handler and his security canine performing private security duties.

"Session" means a group of classes comprising the total hours of mandated compulsory minimum training standards in any of the ~~following~~ categories~~: unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, electronic security technician's assistant or compliance agent~~ of licensure, registration, or certification in accordance with this article and in accordance with §§ 9.1-150.2, 9.1-185.2 and 9.1-186.2 of the Code of Virginia.

"Supervisor" means any natural person who directly or indirectly supervises registered or certified private security services business personnel.

"This chapter" means the Regulations Relating to Private Security Services (6VAC20-171) as part of the Virginia Administrative Code.

"Training certification" means verification of the successful completion of any training requirement established in this chapter.

"Training requirement" means any entry level, in-service, or firearms retraining standard established in this chapter.

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

"Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

"Uniform" means any clothing with a badge, patch or lettering which clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

Part II
Application Fees

6VAC20-171-20. Fees.

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, registration, certification and other administrative requests for services relating to private security services.

CATEGORIES	FEES
-	
CRIMINAL HISTORY RECORDS CHECK	
Fingerprint Processing Application	$50
-	
LICENSE	
Initial business license	~~$800~~
1 Year License	$550
2 Year License	$800
Business license renewal (2 Year License)	$500
Business license category fee	$50
CERTIFICATIONS	
Initial compliance agent certification ~~(includes training)~~	~~$100~~$50
Compliance agent certification renewal ~~(includes training)~~	~~$50~~$25
~~Initial registration~~	~~$25~~
~~Registration renewal~~	~~$20~~
~~Firearms endorsement (annual)~~	~~$10~~
Initial training school	$800
Training school renewal	$500
Training school category fee	$50
~~Training school electronic roster submittal authorization~~	~~$500~~
Initial instructor certification	~~$100~~$50
Instructor certification renewal	~~$50~~$25
Instructor certification category fee	$10
Initial Detector Canine Handler Examiner certification	$50
Detector Canine Handler Examiner Certification renewal	$25
~~Initial certification~~	~~$25~~
~~Certification renewal~~	~~$20~~
REGISTRATION	
Initial registration	$25
Registration renewal	$20
Additional registration category form	$20
Replacement photo identification	$20
TRAINING RELATED	
Firearm Endorsement	$30
~~Application for~~ Entry-level partial-training exemption	$25
In Service Training Alternative Credit Evaluation	$25
Regulatory Compliance entry-level training	$75
Regulatory Compliance In-service training	$50
~~Fingerprint card processing~~	~~$50~~
~~Additional registration category form~~	~~$20~~
~~Replacement photo identification letter~~	~~$15~~
~~Training completion roster form~~	~~$30~~
~~General instructor development course~~	~~$300~~
~~General instructor in service training~~	~~$50~~
~~Firearms instructor development course~~	~~$300~~
~~Firearms instructor in service training~~	~~$50~~
~~Technical assistant training~~	~~$50~~

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for registration, license, or certification renewal applications not received on or before the expiration date of the expiring registration, license, or certification pursuant to 6VAC 20-171-180.

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

C. Dishonor of fee payment due to ~~nonsufficient~~ insufficient funds.

1. The department may suspend the registration, license, certification, or authority it has granted any person~~,~~ ~~licensee or registrant~~ who submits a check or similar instrument for payment of a fee required by statute or

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

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

D. Manual processing service fee. The department shall collect a $20 service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

Part III
Applications Procedures and Requirements

Article 1
Criminal History Records Search

6VAC20-171-30. Fingerprint processing.

A. On or before the first date of hire, each person applying for licensure as a private security services business, including principals, supervisors, and electronic security employees; certification as a private security services training school; certification as a compliance agent, detector canine handler examiner or instructor; or a private security registration ~~or private security certification~~ shall submit to the department:

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

2. A fingerprint processing application;

3. The applicable, nonrefundable fee; and

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

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

C. Fingerprints cards found to be unclassifiable will ~~be returned to the applicant. Action on the application will be suspended~~ suspend all action on the application pending the ~~resubmittal~~ resubmission of a classifiable fingerprint ~~cards~~ card. The applicant shall be so notified in writing and ~~shall~~ must submit a new fingerprint ~~cards and the applicable, nonrefundable fee to the department~~ card within 30 days of notification before the processing of his application shall resume. ~~However, no such fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted and the department is not assessed additional processing fees.~~ If a fingerprint card is not submitted within the 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial. The compliance agent will also be notified in writing by DCJS that the applicant has been denied.

E. Fingerprint applications will only be active for 120 days from submittal. Application for licenses, registrations, and certifications must be submitted within that 120-day period or initial fingerprint submittal will be required.

Article 2
Private Security Services Business License

6VAC20-171-50. Initial business license application.

A. Prior to the issuance of a business license, the applicant shall meet or exceed the requirements of licensing and application submittal to the department as set forth in this section.

B. Each person seeking a license as a private security services business shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business, their fingerprints pursuant to 6VAC20-171-30; for each electronic security employee of an electronic security services business, their fingerprints pursuant to 6VAC20-171-30;

2. Documentation verifying that the applicant has secured a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 and $300,000 issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for a license as a private security services business except sole proprietor or partnership, ~~on a form provided by the department~~ shall submit on the license application, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

~~5. A physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are~~

~~kept and available for inspection by the department. A post office box is not a physical address;~~

~~6.~~ 5. On the license application, designation of at least one individual as compliance agent who is not designated as compliance agent for any other licensee, and who is certified or eligible for certification pursuant to 6VAC20-171-70;

~~7.~~ 6. The applicable, nonrefundable license application fee; and

~~8.~~ 7. Designation on the license application of the type of private security business license the applicant is seeking. The initial business license fee includes one category. A separate fee will be charged for each additional category. The separate categories are identified as follows: security officers/couriers (armed and unarmed), private investigators, electronic security personnel, armored car personnel, personal protection specialists, locksmiths, detector canine handlers and security canine handlers. Alarm respondents crossover into both the security officer and electronic security category; therefore, if an applicant is licensed in either of these categories, he can provide these services without ~~purchasing~~ an additional category fee.

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

D. The department may issue a letter of temporary licensure to businesses seeking licensure under § 9.1-139 of the Code of Virginia for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and compliance agent of the business, provided the applicant has met the necessary conditions and requirements.

E. A new license is required whenever there is any change in the ownership or type of organization of the licensed entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

F. Each license shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity~~, with the exception of a sole proprietorship or partnership that incorporates to form a new corporate entity where the initial licensee remains as a principal in the newly formed corporation. This exception shall not apply to any existing corporation that purchases the business or assets of an existing sole proprietorship~~.

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

H. Each licensee shall be a United States citizen or legal resident alien of the United States.

6VAC20-171-60. Renewal license application.

A. Applications for license renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensee. However, if a renewal notification is not received by the licensee, it is the responsibility of the licensee to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Licenses will be renewed for a period not to exceed 24 months.

C. The department may renew a license when the following are received by the department:

1. A properly completed renewal application;

2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 and $300,000 issued by an insurance company authorized to do business in Virginia;

3. Fingerprint records for any new or additional principals submitted to the department within 30 days of their hire date pursuant to 6VAC20-171-30 provided, however, that any change in the ownership or type of organization of the licensed entity has not resulted in the creation of a new legal entity pursuant to 6VAC-20-171-50;

4. On the application, designation of at least one compliance agent who has satisfactorily completed all applicable training requirements;

5. The applicable, nonrefundable license renewal fee and applicable category of service fees; and

6. On the first day of employment, each new and additional supervisor's fingerprints submitted to the department pursuant to § 9.1-139 H of the Code of Virginia.

D. Each ~~principal and compliance agent listed on the~~ business applying for a license renewal ~~application~~ shall be in good standing in every jurisdiction where licensed, registered or certified in a private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

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

F. On the renewal application the licensee must designate the type of private security business license he wishes to renew. The fee will be based upon the category or categories selected on the renewal application pursuant to 6VAC20-171-20.

Article 3
Compliance Agent Certification

6VAC20-171-70. Compliance agent ~~training and~~ certification requirements.

A. Each person applying for certification as compliance agent shall meet the minimum requirements for eligibility:

1. Be a minimum of 18 years of age;

2. Have (i) three years of managerial or supervisory experience in a private security services business, a federal, state, or local law-enforcement agency, or in a related field or (ii) five years experience in a private security services business, with a federal, state or local law-enforcement agency, or in a related field; and

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

B. Each person applying for certification as compliance agent shall file with the department:

1. A properly completed application provided by the department;

2. Fingerprint ~~cards~~ card pursuant to 6VAC20-171-30;

3. Official documentation verifying that the individual has (i) three years of managerial or supervisory experience in a private security services business, a federal, state, or local law-enforcement agency, or in a related field or (ii) five years experience in a private security services business, with a federal, state or local law-enforcement agency, or in a related field; and

4. The applicable, nonrefundable application fee.

C. ~~Following review of all application requirements, the department shall assign the applicant to an entry level compliance agent training session provided by the department, at which the applicant must successfully complete the applicable entry level compliance agent training requirements pursuant to this chapter and achieve a passing score of 80% on the compliance agent examination.~~ The department may issue a certification for a period not to exceed 24 months when the following are received by the department:

1. A properly completed application provided by the department;

2. The applicable, nonrefundable certification fee;

3. Verification of eligibility pursuant to § 9.1-139 A of the Code of Virginia; and

4. Verification of satisfactory completion of department regulatory compliance entry-level training requirements pursuant to 6VAC20-171-72 of this chapter.

~~D. Following completion of the entry level training requirements, the compliance agent must complete in-service training pursuant to the compulsory minimum training standards set forth by this chapter.~~

~~E.~~ D. Each compliance agent shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-71. Compliance agent certification renewal requirements.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the certified compliance agent. However, if a renewal notification is not received by the compliance agent, it is the responsibility of the compliance agent to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

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

1. Successfully apply on an application provided by the department, and complete the in-service regulatory compliance agent classroom training session provided by the department, or successfully complete an approved online in-service training session pursuant to 6VAC20-171-72. Training must be completed within the 12 months immediately preceding the expiration date of the current certification pursuant to the certification training standards in 6VAC20-171-72; and

2. Be in good standing in every jurisdiction where licensed, registered, or certified in private security services or related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

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

2. The applicable, nonrefundable certification renewal fee; and

3. Verification of satisfactory completion of department regulatory compliance agent in-service training pursuant to 6VAC20-171-72.

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

6VAC20-171-72. Compliance agent regulatory compliance training requirements.

A. Each eligible person applying to attend a regulatory compliance entry-level or in-service training session provided by the department shall file with the department:

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

2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a training session provided by the department. Applicants for initial certification as a compliance agent must achieve a minimum passing score of 80% on the entry-level regulatory compliance training examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial compliance agent certification.

C. Each person certified by the department to act as a compliance agent shall complete the department in-service regulatory compliance training within the last 12-month period of certification.

Article 4
Private Security Services Training School Certification

6VAC20-171-80. Initial training school application.

A. Prior to the issuance of a training school certification, the applicant shall meet or exceed the requirements of certification and application submittal to the department as set forth in this section.

B. Each person seeking certification as a private security services training school shall file a completed application provided by the department to include:

1. For each principal of the applying training school, their fingerprints pursuant to 6VAC20-171-30;

2. Documentation verifying that the applicant has secured a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 and $300,000 issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a training school, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for certification as a private security services training school except sole proprietor and partnership, on a ~~form~~ certification application provided by the department, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

~~5. A physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical location;~~

~~6.~~ 5. On the training school certification application, designation of at least one individual as training director who is not designated as training director for any other training school, and who is certified as an instructor pursuant to Article 5 (6VAC20-171-100 et seq.) of this part. A maximum of four individuals may be designated as an assistant ~~training~~ school director;

~~7.~~ 6. A copy of the curriculum in course outline format for each category of training to be offered, including the hours of instruction with initial and in-service courses on separate documents;

~~8.~~ 7. A copy of the training school regulations;

~~9.~~ 8. A copy of the training completion certificate to be used by the training school;

~~10.~~ 9. A copy of the range regulations to include the assigned DCJS range identification number if firearms training will be offered; and

~~11.~~ 10. The applicable, nonrefundable training school certification application fee.

11. On the certification application, selection of the category of training the applicant is seeking to provide.

The initial training school certification fee includes one category. A separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondent (armed and unarmed) to include arrest authority and firearms training, (ii) private investigators, (iii) locksmiths, electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers, security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150 of the Code of Virginia, and (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia, bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia.

C. When the department has received and processed a completed application and accompanying material, the department ~~shall~~ may inspect the training facilities ~~to ensure conformity with department policy~~, including an inspection of the firearms range, if applicable, to ensure conformity with the minimum requirements set forth by this chapter.

D. Upon completion of the initial training school application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to training schools for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and training director of the business, provided the applicant has met the necessary conditions and requirements.

F. A new certification is required whenever there is any change in the ownership or type of organization of the certified entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

G. Each certification shall be issued to the legal entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity~~, with the exception of a sole proprietorship or partnership that incorporates to form a new corporate entity where the initial licensee remains as a principal in the newly formed corporation. This exception shall not apply to any existing corporation that purchases the training school or assets of an existing sole proprietorship~~.

H. Each certified training school shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-90. Renewal training school application.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address ~~of~~ or email address provided by the certified training school. However, if a renewal notification is not received by the training school, it is the responsibility of the training school to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Upon completion of the renewal training school application requirements, the department may issue a renewal certification for a period not to exceed 24 months.

C. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application;

2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 and $300,000 issued by an insurance company authorized to do business in Virginia;

3. On the application, designation of at least one certified instructor as training director who has satisfactorily completed all applicable training requirements; and

4. Fingerprints for each new and additional principal pursuant to § 9.1-139 H of the Code of Virginia.

5. The applicable, nonrefundable certification renewal fee.

6. The applicable, nonrefundable category fee and documentation required pursuant to 6VAC20-171-80 for any new categories of training.

D. Each ~~principal and instructor listed on the license~~ training school applying for a certification renewal ~~application~~ shall be in good standing in every jurisdiction where licensed, registered or certified in private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions ~~of this chapter~~ pursuant to 6VAC20-171-180.

Article 5
Private Security Services Instructor Certification

6VAC20-171-100. Initial instructor application.

A. Each person applying for certification as an instructor shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;

2. Have a high school diploma or equivalent (GED);

3. Have either (i) successfully completed a DCJS instructor development course within the three years immediately preceding the date of the application or submitted a waiver application for an instructor development course that meets or exceeds standards established by the department; or (ii) successfully completed an approved DCJS instructor development program longer than three years prior to the date of application, and provided documented instruction during the three years immediately preceding or provided documented instruction in a related field at an institution of higher learning;

4. Have a minimum of (i) three years management or supervisory experience with a private security services business or with any federal, military police, state, county or municipal law-enforcement agency, or in a related field; or (ii) five years general experience in a private security services business, with a federal, state or local law-enforcement agency, or in a related field; or (iii) one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which certification is requested, or in a related field; ~~and~~

5. Have previous training and a minimum of two years work experience for those subjects in which certification is requested; and

~~5.~~ 6. Be a United ~~State~~ States citizen or legal resident alien of the United States.

B. Each person applying for certification as an instructor shall file with the department:

1. A properly completed application provided by the department;

2. Fingerprint ~~cards~~ card pursuant to 6VAC20-171-30;

3. Official documentation verifying that the applicant meets the minimum eligibility requirements pursuant to this section;

~~4. Official documentation verifying previous instructor experience, training, work experience and education for those subjects in which certification is requested. The department will evaluate qualifications based upon the justification provided;~~

~~5.~~ 4. The applicable, nonrefundable application fee; and

~~6.~~ 5. Evidence of status as a United States citizen or legal resident alien of the United States.

C. Following review of all application requirements, the department shall verify eligibility and authorize the applicant to submit a regulatory compliance training enrollment application for an entry-level instructor regulatory compliance classroom training session provided by the department, or approve the applicant for taking the approved online training session pursuant to 6VAC20-171-111, at which the applicant must successfully complete the applicable entry-level regulatory compliance training requirements pursuant to this chapter and achieve a passing score of 80% on the regulatory compliance examination.

~~C.~~ D. In addition to the instructor qualification requirements described in subsections A ~~and B~~ through C of this section, each applicant for certification as a firearms instructor shall submit to the department:

1. Official documentation that the applicant has successfully completed a DCJS firearms instructor school or a waiver application with supporting documentation demonstrating completion of a firearms instructor school specifically designed for law-enforcement or private security personnel that meets or exceeds standards established by the department within the three years immediately preceding the date of the instructor application.

2. Official documentation in the form of a signed, dated range sheet identifying the type, caliber, and action, along with the qualification score and course of fire that the applicant has successfully qualified, with a minimum range qualification of 85%, with each of the following:

a. A revolver;

b. A semi-automatic handgun; and

c. A shotgun.

3. Firearms instructors applying to provide patrol rifle training in accordance with 6VAC20-171-395 must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

4. Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, or certified private security training school. The qualifications must be documented by another instructor

certified as a law-enforcement firearms instructor or private security services firearms instructor.

~~3.~~ 5. The firearms instructor training must have been completed within the three years immediately preceding the date of the instructor application; or in the event that the school completion occurred prior to three years, the applicant shall have provided firearms instruction during the three years immediately preceding the date of the instructor application.

~~D.~~ E. Upon completion of the initial instructor application requirements, the department may issue an initial certification for a period not to exceed 24 months.

~~E.~~ F. The department may issue a letter of temporary certification to instructors for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

~~F.~~ G. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

~~G.~~ H. Each instructor shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-110. Renewal instructor application.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address ~~of~~ or email address provided by the certified instructor. However, if a renewal notification is not received by the instructor, it is the responsibility of the instructor to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

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

1. Successfully complete the in-service ~~training~~ regulatory compliance classroom training session provided by the department, or successfully complete an approved online in-service training session pursuant to 6VAC20-171-111 within the 12 months immediately preceding the expiration date of the current certification ~~pursuant to the compulsory minimum training standards in 6VAC20-171-360; and~~;

2. Successfully complete a minimum of 4 hours of continuing education in instructor development. Training must be completed within the 12 months immediately preceding the expiration date of the current certification;

3. Successfully complete a minimum of 2 hours of professional development for topics related to each category of instructor certification during the certification period; and

~~2.~~ 4. Be in good standing in every jurisdiction where licensed, registered or certified in a private security services or related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

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

2. The applicable, nonrefundable certification renewal fee~~.~~;

3. Verification of satisfactory completion of regulatory compliance in-service training provided by the department;

4. Verification of satisfactory completion of instructor development continuing education requirements;

5. Verification of 2 hours of professional development training in each category of certification taken during the certification period; and

6. For firearms instructors, official documentation in the form of a signed, dated range sheet identifying the type, caliber, and action, along with the qualification score and course of fire, with a minimum range qualification of 85%, with each of the following:

a. A revolver;

b. A semi-automatic handgun; and

c. A shotgun.

7. Firearms instructors applying to provide patrol rifle training in accordance with 6VAC20-171-395 must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

8. Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, or certified private security training school. The qualifications must be documented by another instructor certified as a law-enforcement firearms instructor or private security services firearms instructor.

E. Any instructor renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-171-111. Instructor regulatory compliance training requirements.

A. Each eligible person applying to attend a regulatory compliance entry-level or in-service training session provided by the department shall file with the department:

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

2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a regulatory compliance training session provided by the department. Applicants for initial certification as an instructor must achieve a minimum passing score of 80% on the entry-level regulatory compliance examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial instructor certification.

6VAC20-171-115. Initial detector canine handler examiner certification.

A. Each person applying for certification as a detector canine handler examiner shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;

2. Have a high school diploma or equivalent (GED);

3. Have a minimum of five years experience as a detector canine handler and a minimum of two years experience as a detector canine trainer;

4. Have an active certification as a detector canine handler examiner or equivalent credential from a department approved national organization, unit of the United States military, or other formal entity; or be sponsored by a certified DCJS private security services detector canine handler examiner;

5. Successfully pass a written examination and performance evaluations according to department guidelines; and

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

B. Each person applying for certification as a detector canine handler examiner shall file with the department:

1. A properly completed application provided by the department;

2. Fingerprint card pursuant to 6VAC20-171-30;

3. Official documentation according to subdivisions A 3 and 4 of this section; and

4. The applicable, nonrefundable application fee.

C. Following review of all application requirements, the department shall verify eligibility and authorize the applicant to submit a regulatory compliance training enrollment application pursuant to 6VAC20-171-117 for an entry-level classroom training session provided by the department, or approve the applicant for taking the approved online training session pursuant to 6VAC20-171-117, at which the applicant must successfully complete the applicable entry-level regulatory compliance training requirements pursuant to this chapter and achieve a passing score of 80% on the examination.

D. Upon completion of the initial detector canine handler examiner application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to detector canine handler examiners for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

F. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

G. Each detector canine handler examiner shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-116. Renewal detector canine handler examiner certification.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the certified examiner. However, if a renewal notification is not received by the examiner, it is the responsibility of the examiner to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

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

1. Have maintained certification as a detector canine handler examiner or equivalent credential according to 6VAC20-171-115 A 4 or demonstrate the completion of a

minimum of 16 hours of continuing education during the previous certification period; and

2. Be in good standing in every jurisdiction where licensed, registered, or certified. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

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

2. The applicable, nonrefundable certification renewal fee.; and

3. Official documentation according to subsection B 1 of this section.

E. Any examiner renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-171-117. Detector canine handler examiner regulatory compliance training enrollment.

A. Each eligible person applying to attend a regulatory compliance entry-level training session provided by the department shall file with the department:

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

2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a regulatory compliance examiner training session provided by the department, at which the applicant must successfully complete the applicable training requirements. Applicants for initial certification as an examiner must achieve a minimum passing score of 80% on the entry-level examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial examiner certification.

Article 6
Private Security Services Registration

6VAC20-171-120. Initial registration application.

A. Individuals required to be registered, pursuant to § 9.1-139 C of the Code of Virginia, in the categories of armored car personnel, courier, unarmed security officer, armed security officer, security canine handler, explosives detector canine handler, narcotics detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant shall meet all registration requirements in this section. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with a firearm endorsement pursuant to 6VAC20-171-140. If carrying a handgun concealed, the individual must also have a valid concealed handgun permit and the written permission of his employer pursuant to § 18.2-308 of the Code of Virginia.

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

1. Be a minimum of 18 years of age;

2. Successfully complete all initial training requirements for each registration category requested, including firearms endorsement if applicable, ~~requested~~ pursuant to the compulsory minimum training standards in ~~6VAC20-171-360~~ 6VAC20-171-350; and

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

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;

2. On the application, his mailing address;

3. Fingerprint ~~cards~~ card pursuant to 6VAC20-171-30; ~~and~~

4. A photo taken by a certified private security services training school or other site approved by the department; and

5. The applicable, nonrefundable application fee.

D. Each person seeking or required to seek registration as unarmed security officer, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant may be employed for a period not to exceed 90 consecutive days in any categories listed above while completing the compulsory minimum training standards, provided:

1. ~~Fingerprint cards~~ Fingerprints have been submitted pursuant to 6VAC20-171-30;

2. The individual is not employed in excess of 120 days without having been issued a registration from the department; and

3. The individual did not fail to timely complete the required training with previous employer(s).

E. Upon completion of the initial registration application requirements, the department may issue an initial registration ~~letter~~ for a period not to exceed 24 months. ~~This registration letter shall be submitted by the applicant to the Virginia Department of Motor Vehicles or other specified entity for a state-issued photo identification card.~~

F. The department may issue a letter of temporary registration for not more than 120 days while awaiting the results of the state and national fingerprint search, provided the applicant has met the necessary conditions and requirements.

G. Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be assigned or otherwise transferred to another individual.

H. Each registered individual shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-130. Renewal registration application.

A. Applications for registration renewal shall meet all renewal requirements and should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address ~~of~~ or email address provided by the registered individual. However, if a renewal notification is not received by the individual, it is the responsibility of the individual to ensure renewal requirements are filed with the department. Registration renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

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

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the compulsory minimum training standards set forth by this chapter; and

2. Be in good standing in every jurisdiction where licensed, registered or certified. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

C. The department may renew a registration when the following are received by the department:

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

2. For individuals applying for renewal with the category of armored car personnel, fingerprint ~~cards~~ card submitted pursuant to 6VAC20-171-30;

3. The applicable, nonrefundable registration renewal fee; ~~and~~

4. For individuals with firearms endorsements, evidence of completion of annual firearms retraining in accordance with ~~6VAC20-171-400.~~ Part V, Article 2 (6VAC20-171-365 et seq.) of this chapter; and

5. Upon the request of the department, a new photo taken by a certified private security services training school or other site approved by the department.

D. Upon completion of the renewal registration application requirements, the department may issue a registration ~~letter~~ for a period not to exceed 24 months. ~~This registration letter shall be submitted by the applicant to the Virginia Department of Motor Vehicles or other specified entity for a state-issued photo identification card.~~

E. Any renewal application received by the department shall meet all renewal requirements prior to the expiration date of a registration or shall be subject to the requirements set forth by the reinstatement provisions ~~of this chapter~~ pursuant to 6VAC20-171-180.

6VAC20-171-135. Firearms endorsement.

A. Firearms training endorsement is required for all private security services business personnel who carry or have immediate access to a firearm while on duty. Each person who carries or has immediate access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person applying for a firearms endorsement shall meet the minimum requirements for eligibility as follows:

1. Must be registered in a regulated category.

2. Must complete entry-level handgun, and if applicable, shotgun and patrol rifle training as described in Part V, Article 2 (6VAC20-171-360 et seq.) of this chapter.

C. All armed private security services business personnel with the exception of personal protection specialist must satisfactorily complete firearms retraining prescribed in 6VAC20-171-400.

D. All armed personal protection specialist must satisfactorily complete firearms retraining prescribed in 6VAC20-171-420.

E. Firearms endorsements are issued for a period not to exceed 12 months. Individuals must complete firearms retraining within the 90 days prior to the expiration of their current firearm endorsement or will be required to complete entry-level training requirements prior to applying for an active endorsement.

6VAC20-171-170. Replacement state issued photo identification letter.

Registered individuals seeking a replacement state issued photo identification ~~letter~~ card shall submit to the department:

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

2. The applicable, nonrefundable application fee.

Article 8
Reinstatement and Renewal Extension

6VAC20-171-180. Reinstatement.

A. Any business license, training school, instructor, compliance agent, detector canine handler examiner certification, ~~instructor certification~~ or registration not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be licensed, registered or certified with the department to provide private security services.

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

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

2. The applicable, nonrefundable reinstatement fee pursuant to this chapter and in accordance with 6VAC20-171-20 B.

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

~~The department shall not reinstate business licenses or training school certifications that have become null and void due to not maintaining required insurance or surety bond coverage.~~

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

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

E. When a license, certification, or registration is reinstated, the applicant shall continue to have the same DCJS number and shall be assigned an expiration date two years from the previous expiration date of the license, certification, or registration.

F. An applicant who reinstates shall be regarded as having been continuously licensed, certified, or registered without interruption. Therefore, the applicant shall remain under the disciplinary authority of the department during this entire period and may be held accountable for his activities during this period.

G. A person who fails to reinstate his license, certification, or registration shall be regarded as unlicensed, uncertified, or unregistered from the expiration date of the license, certification, or registration forward.

H. Nothing in this chapter shall divest the department of its authority to discipline a person for a violation of the law or regulations during the period of time for which the person was licensed, certified, or registered.

6VAC20-171-190. Renewal extension.

A. An extension of the time period to meet renewal requirements may be approved only under specific circumstances which do not allow private security personnel, businesses, or training schools to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;

2. Extended injury;

3. Military or foreign service; or

4. Any emergency temporary assignment of private security personnel for purposes of (i) natural disaster, (ii) homeland security or (iii) documented threat, by the private security services business or training school for which he is employed.

B. A request for extension shall:

1. Be submitted in writing, dated and signed by the individual or principal of a licensed entity prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department based on an evaluation of the justification for waiver.

2. Indicate the projected date the person, business, or training school will be able to comply with the requirements; and

3. Include a copy of the physician's record of the injury or illness, ~~or~~ a copy of the government orders or documentation of emergency temporary assignment.

~~C. No extension will be approved for registrations, certifications, or business licenses that have expired with the exception of cases involving military or foreign services.~~

~~D.~~ C. Applications for additional extensions may be approved upon written request of the person, business, or training school.

D. The total time for renewal extension, including additional extensions, shall not exceed 12 months beyond the original expiration date. If renewal requirements are not met during the period of extension, the individual must complete all initial training requirements to include applicable entry-level training.

E. The private security services person, business, or training school shall be nonoperational during the period of extension.

Article 9
Application Sanctions; Exemptions, Recognition/Reciprocity

6VAC20-171-200. Denial, probation, suspension and revocation.

A. The department may deny a license, registration or certification in which any person or principal of an applying business has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

B. The department may deny a license, registration or certification in which any person or principal of an applying business or training school has not maintained good standing in every jurisdiction where licensed, registered or certified in a private security services or related field; or has had his license, registration or certification denied upon initial application, suspended, revoked, surrendered, or not renewed; or has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing, registration or certification in Virginia.

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

D. The department may deny licensure ~~to a firm,~~ certification, or registration for other just cause.

E. A licensee, training school, compliance agent, instructor, detector canine handler examiner, or registered individual shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation.

F. If a registrant or certified person is subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter, the department will notify the last known licensed or certified private security services business or training school.

Part IV
Administrative Requirements/Standards of Conduct

Article 1
Private Security Services Businesses

6VAC20-171-215. General requirements.

All private security services registered and certified personnel, licensed businesses and certified training schools are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.

6VAC20-171-220. Business administrative requirements.

A licensee shall:

1. Maintain at all times with the department its email address and physical ~~location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department~~ address. A post office box is not a physical ~~location~~ address. Such notification shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Maintain at all times with the department its current operating name and all fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.

3. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change to include fingerprint cards pursuant to this chapter.

4. Report in writing to the department any change in the entity of the licensee that results in continued operation requiring a license. Such written report shall be received by the department within 10 days after the occurrence of such change.

5. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. ~~Failure of the business to do so shall result in the license becoming null and void.~~ Each day of uninsured activity would be construed as an individual violation of this requirement.

6. Maintain at all times with the department a completed irrevocable consent for service if the licensee is not a resident of the Commonwealth of Virginia. Licensees that move their business from the Commonwealth shall file a completed irrevocable consent for services within 15 days of the change in location.

7. Employ at all times at least one individual designated as compliance agent who is in good standing and is certified pursuant to 6VAC20-171-70 and who is not currently designated as compliance agent for another licensee. In the event there is more than one compliance agent designated for the business, designate one as the primary compliance agent and point of contact.

8. Maintain at all times and for a period of not less than three years from the date of termination of employment the following documentation concerning all regulants: documentation or electronic images of the date of hire in the regulated category, documentation that the fingerprint processing application was submitted on the date of hire, verification that the employee is a U.S. citizen or legal resident alien and is properly registered/certified and trained, current physical and mailing addresses for all regulated employees and telephone numbers if applicable.

9. Upon termination of employment of a certified compliance agent, notify the department in writing within 10 calendar days. This notification shall include the name of the individual responsible for the licensee's adherence to applicable administrative requirements and standards of conduct during the period of replacement.

10. Within 90 days of termination of employment of the sole remaining compliance agent, submit the name of a new compliance agent who is eligible for certification pursuant to this chapter and who is not currently designated for another licensee. Individuals not currently eligible may pursue certification pursuant to Part III (6VAC20-171-30 et seq.) of this chapter. Such notification shall be in writing and signed by a principal of the business and the designated compliance agent.

11. Prominently display at all times for public inspection, in a conspicuous place where the public has access, the business license issued by the department.

12. Ensure that all individuals submit fingerprint cards pursuant to 6VAC20-171-30 as required by the Code of Virginia.

13. Inform the department in writing within 10 days of receiving knowledge of any principal, partner, officer, compliance agent or employee regulated or required to be regulated by this chapter being arrested for a crime in any jurisdiction, pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

14. Inform the department in writing within 10 days of receiving knowledge of any principal, licensee, subsidiary, partner, officer, compliance agent or employee regulated or required to be regulated by this chapter, having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

15. On a form provided by the department and within 10 calendar days of receiving knowledge of ~~the~~ an incident, submit a report of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise.

16. In the event a complaint against the licensee is received by the department, be required to furnish documentary evidence (written agreement) of the terms agreed to between licensee and client, which shall include at a minimum the specific scope of services and fees assessed for such services. The licensee shall retain a copy for a period of not less than three years from completion of said agreement.

17. Not fail to honor the terms and conditions of a warranty or written agreement.

18. In the event a licensee sells or otherwise transfers the ownership of a monitoring agreement of an electronic security customer, notify the end user, in writing, within 30 days of the transfer of monitoring services. No licensee shall sell or otherwise transfer to an entity not licensed in Virginia.

19. Ensure that all regulated employees carry ~~a state issued~~ the photo identification card ~~along with their registration or certification card, unless the card is one in the same~~ issued by the department while on duty.

20. Maintain a written use of force policy dictating the business' policy for using deadly force and for use of less lethal force. A statement certifying that the employee has read and understands the business' use of force policy must be signed by each employee who is permitted to carry firearms or intermediate weapons and maintained in the employee's file.

21. Maintain records for individual employees permitted to carry intermediate weapons while on duty to verify training in the use of the permitted intermediate weapons.

22. Maintain at all times and for a period of not less than three years from the date of termination, decertification or other separation, records of detector canine handler team certifications to include a photo of detector canine teams utilized to provide regulated private security services as defined in this chapter.

6VAC20-171-230. Business standards of conduct.

A licensee shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Ensure that all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

3. Not direct any employee regulated, or required to be regulated, by this chapter to engage in any acts prohibited by the Code of Virginia and this chapter.

4. Employ individuals regulated, or required to be regulated, as follows:

a. A licensee shall employ or otherwise utilize individuals possessing a valid registration issued by the department showing the registration categories required to perform duties requiring registration pursuant to the Code of Virginia;

b. A licensee shall not allow individuals requiring registration as armored car personnel, armed security officers/couriers, armed alarm respondents with firearm endorsement, private investigators, personal protection specialists, detector canine handlers or security canine handlers to perform private security services until such time as the individual has been issued a registration by the department;

c. A licensee may employ individuals requiring registration as unarmed alarm respondent ~~without firearm endorsement~~, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, armored car driver, unarmed security officer or electronic security technician's assistant for a period not to exceed 90 consecutive days in any registered category listed above while completing the compulsory minimum training standards provided:

(1) The individual's fingerprint cards have been submitted pursuant to Article 1 (6VAC20-171-30 et seq.) of Part III of this chapter;

(2) The individual is not employed in excess of 120 days without having been issued a registration from the department; and

(3) The individual did not fail to timely complete the required training with previous employer(s).

d. A licensee shall not employ any individual carrying or having access to a firearm in the performance of his duties who has not obtained a valid registration and firearms endorsement from the department; and

e. A licensee shall maintain appropriate documentation to verify compliance with these requirements. A licensee shall maintain these documents after employment is terminated for a period of not less than three years.

5. Not contract or subcontract any private security services in the Commonwealth of Virginia to a person ~~not~~ required to be licensed by the department. Verification of a contractor's or subcontractor's license issued by the department shall be maintained for a period of not less than three years.

6. Ensure that the compliance agent conforms to all applicable application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

7. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records or training records that are required to be maintained by the Code of Virginia and this chapter.

8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

10. ~~Not have~~ Ensure that regulated employees of the business have not been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction

where convicted shall be prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification, certification renewal, or firearms endorsement through any fraud or misrepresentation.

12. Include the business license number issued by the department on all business advertising materials pursuant to the Code of Virginia. Business advertising materials containing information regarding more than one licensee must contain the business license numbers of each licensee identified.

13. Not conduct a private security services business in such a manner as to endanger the public health, safety and welfare.

14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration or certification.

15. Not represent as one's own a license issued to another private security services business.

16. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. (This shall not apply if the alarm user has provided written authorization requesting immediate or one call dispatch to both their local police department and their dealer of record). This shall not apply to duress or hold-up alarms.

17. Not perform any unlawful or negligent act resulting in loss, injury or death to any person.

18. Utilize vehicles for private security services using or displaying ~~a~~ an amber flashing light only as specifically authorized by § 46.2-1025.9 of the Code of Virginia.

19. Not use or display the state seal of Virginia or the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision of the Commonwealth, or any portion thereof, as a part of any logo, stationery, letter, training document, business card, badge, patch, insignia or other form of identification or advertisement.

20. Not provide information obtained by the firm or its employees to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

21. Not engage in acts of unprofessional conduct in the practice of private security services.

22. Not engage in acts of negligent or incompetent private security services.

23. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

24. Not violate any state or local ordinances.

25. Satisfy all judgments to include binding arbitrations related to private security services not provided.

26. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

27. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist or otherwise prohibited under federal law.

28. Not act as or be an ostensible licensee for undisclosed persons who do or will control directly or indirectly the operations of the licensee's business.

29. Not provide false or misleading information to representatives of the department.

30. Not refuse to cooperate with an investigation being conducted by the department.

31. Not provide materially incorrect, misleading, incomplete, or untrue information on a license application, renewal application, or any other document filed with the department.

6VAC20-171-240. Compliance agent administrative requirements and standards of conduct.

A compliance agent shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Maintain at all times with the department his mailing address and email address. Written notification of any change of address shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

4. Not commit any act or omission which results in a private security license or registration being suspended,

revoked, not renewed or being otherwise disciplined in any jurisdiction.

5. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

6. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after being arrested for a crime in any jurisdiction, pleading guilty or nolo contendere ~~or~~ and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

7. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

8. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

9. Only be designated with the department and acting as a compliance agent for one licensed entity.

10. Be designated with the department as compliance agent for a licensee and shall:

a. Ensure that the licensee and all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter;

b. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia and this chapter;

c. Notify the department in writing within 10 calendar days following termination of his employment as compliance agent for the licensee; and

d. Ensure that all regulated employees carry a state issued photo identification card unless the card is one in the same along with their registration ~~or certification~~ card.

11. Not engage in acts of unprofessional conduct in the practice of private security services.

12. Not engage in acts of negligent and/or incompetent private security services.

13. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

14. Satisfy all judgments to include binding arbitrations related to private security services not provided.

15. Not publish or cause to be published any ~~written business~~ material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive or misleading.

16. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist.

17. Not violate any state or local ordinances related to private security services.

18. Not provide false or misleading information to representatives of the department.

19. Not refuse to cooperate with an investigation being conducted by the department.

20. Not use access to the department's database information for any other purpose than verifying employee's application status.

21. Not allow another to use access granted to the department's database for any purpose.

22. Not provide materially incorrect, misleading, incomplete, or untrue information on a certification application, certification renewal application, or any other document filed with the department.

23. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.

~~Article 2~~
~~Private Security Services Training Schools~~

6VAC20-171-245. ~~General requirements.~~ (Repealed.)

~~All training schools are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.~~

Article 2
Private Security Services Training Schools

6VAC20-171-250. ~~Administrative~~ Training school administrative requirements.

A training school shall:

1. Maintain at all times with the department its email address and physical ~~location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department~~ address. A post office box is not a physical ~~location~~ address. Such notification shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Employ at all times one individual designated as training director who is currently certified as an instructor pursuant to this chapter and who is not currently designated as training director for another training school. A training school may designate a maximum of four individuals as assistant ~~training~~ school directors.

3. Upon termination of the services of a certified instructor, notify the department in writing within 10 calendar days. Should the instructor also be designated as the training director for the training school, this notification shall include the name of the instructor responsible for the training school's adherence to applicable administrative requirements and standards of conduct during the period of training director replacement.

4. Within 90 days of termination of employment of the sole remaining training director, submit the name of a new instructor eligible for designation pursuant to this chapter and who is not currently designated for another training school. Individuals not currently eligible may pursue certification pursuant to Part III (6VAC20-171-30 et seq.) of this chapter. Such notification shall be in writing and signed by a principal of the training school and the designated training director.

5. Notify the department in writing of any certified instructors or subject matter specialists eligible to provide instruction at the training school. The notification shall be received by the department prior to the individual conducting any training for the training school and signed by the training school director and the designated instructor or subject matter specialist.

6. Prominently display at all times, in a conspicuous place where the public has access, the training school certification issued by the department.

7. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. ~~Failure of the training school to do so shall result in the certification becoming null and void.~~ Each day of uninsured activity would be construed as an individual violation of this requirement.

8. Inform the department in writing within 10 days, for any principal, partner, officer, instructor or employee regulated or required to be regulated by this chapter being arrested for a crime in any jurisdiction, pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

9. Inform the department in writing within 10 days, for any principal, partner, officer, instructor or employee regulated or required to be regulated by this chapter having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

10. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 10 days after the occurrence of such change to include fingerprint cards submitted pursuant to 6VAC20-171-30.

11. Maintain at all times with the department its current operating name and fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.

12. Report in writing to the department any change in the entity of the training school that results in continued operation requiring a certification. Such written report shall be received by the department within 10 days after the occurrence of such change.

13. Maintain written authorization from the department for any subject matter specialists being used to provide instruction.

14. Develop lesson plans for each training curriculum and subject being offered in accordance with the topical outlines submitted to the department to include hours of instruction.

15. Maintain comprehensive and current lesson plans for each entry level training curriculum and subject being offered.

16. Maintain comprehensive and current lesson plans for each in-service training curriculum and subject being offered.

17. Maintain comprehensive and current lesson plans for each firearms training curriculum and subject being offered.

18. Date all lesson plans and handout material, including the initial date of development and subsequent revisions.

19. Ensure that current copies of the following requirements are provided to and maintained with the department, including:

a. A list of all training locations used by the training school, excluding hotel/motel facilities;

b. A list of all firing range names and locations;

c. A list of all subject matter specialists currently employed, or otherwise utilized; and

d. Copies of current topical outlines for all lesson plans and curriculums. The lesson plans and subsequent course outlines shall include (i) specific reference to the course content involving the Code of Virginia and this chapter and (ii) the hours of instruction.

20. Ensure that range qualification for all firearms training is completed pursuant to this chapter except with written authorization from the department.

21. On a form provided by the department and within 10 calendar days of ~~the~~ an incident, submit a report of any incident in which any instructor, student or employee has discharged a firearm while on duty, excluding any training exercise.

22. Not act as or be a certified training school for undisclosed persons who directly or indirectly control the operation of the training school.

23. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by the department within seven days of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

6VAC20-171-260. Training school standards of conduct.

A training school shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Ensure that the owners, principals, training director and all instructors employed by the training school conform to all applicable application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

3. Utilize only certified instructors, or other individuals eligible to provide instruction pursuant to this chapter in the conduct of private security training sessions.

4. Maintain current files that include copies or electronic images of attendance records, a master final examination, pass/fail recording of examination and firearms qualification scores, training completion rosters, and training completion forms for each student for three years from the date of the training session in which the individual student was enrolled.

5. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records or training records that are required to be maintained by the Code of Virginia and this chapter.

6. Permit the department to inspect and observe any training session. Certified training schools that conduct training sessions not located within Virginia may be required to pay the expenses of inspection and review.

7. Include the training school certification number issued by the department on all business advertising materials pursuant to the Code of Virginia.

8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

10. Ensure that the owner, principals, training director and all instructors employed by the training school have not been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

12. Conduct entry level and in-service training sessions separately. In-service subjects and curriculums may not be incorporated or included as a part of the entry-level subjects and curriculums.

13. Not conduct a private security services training school in such a manner as to endanger the public health, safety and welfare.

14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director or instructor.

15. Not represent as one's own a certification issued to another private security services training school.

16. Not perform any unlawful or negligent act resulting in loss, injury or death to any person.

17. Not use or display the state seal of Virginia, or any portion thereof, as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement.

18. Not use or display the state seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision, or any portion thereof, as a part of the training school's logo, stationery, letter, training document, business card, badge, patch, insignia or other form of identification or advertisement.

19. Not engage in acts of unprofessional conduct in the practice of private security services.

20. Not engage in acts of negligent or incompetent private security services.

21. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

22. Not violate any state or local ordinances related to private security services.

23. Satisfy all judgments to include binding arbitrations related to private security services not provided.

24. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

25. Not provide false or misleading information to representatives of the department.

26. Not refuse to cooperate with an investigation being conducted by the department.

27. Not act as or be an ostensible certified training school for undisclosed persons who do or will control directly or indirectly the operations of the training school.

28. Not provide materially incorrect, misleading, incomplete, or untrue information on a certification application, renewal application, or any other document filed with the department.

6VAC20-171-270. ~~Private security services training~~ Training school director administrative requirements and standards of conduct.

A training school director shall:

1. Ensure that the certified training school and all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

2. Conform to all application requirements, administrative requirements and standards of conduct as a certified instructor pursuant to the Code of Virginia and this chapter.

3. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia and this chapter.

4. Notify the department in writing within 10 calendar days following termination of his employment as training director for the certified training school.

5. Not engage in acts of unprofessional conduct in the practice of private security services.

6. Not engage in act of negligent or incompetent private security services.

7. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

8. Not violate any state or local ordinances relating to private security services.

9. Satisfy all judgments to include binding arbitrations relating to private security services not provided.

10. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

11. Use access to the department's database information only for the purpose of verifying employed instructors' or students' application status.

12. Not allow another to use access granted to the department's database for any purpose.

13. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by the department within seven days of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

6VAC20-171-280. Private security services instructor administrative requirements and standards of conduct.

An instructor shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Maintain at all times with the department his email address and mailing address. Written notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

4. Inform the department, and the training school for which the individual is designated as an instructor if applicable, in writing within 10 days after being arrested for a crime in any jurisdiction pleading guilty or nolo contendere ~~or~~ and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

5. Inform the department, and the training school for which the individual is designated as instructor, if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

6. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

7. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

8. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

9. Conduct training sessions pursuant to requirements established in this chapter.

10. Notify the department within 10 calendar days following termination of his employment as instructor for the training school.

11. Not engage in acts of unprofessional conduct in the practice of private security services.

12. Not engage in acts of negligent or incompetent private security services.

13. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

14. Not violate any state or local ordinances relating to private security services.

15. Not publish or cause to be published any material relating to Private Security Services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

16. Not provide false or misleading information to representatives of the department.

17. Not refuse to cooperate with an investigation being conducted by the department.

18. Not provide materially incorrect, misleading, incomplete, or untrue information in a certification application, renewal application, or any other document filed with the department.

19. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.

20. Transport, carry, and utilize firearms while on duty only in a manner that does not endanger the public health, safety, and welfare.

21. Report in writing to the training school director within 24 hours of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

22. Provide any person who fails to requalify with a mimimum passing score on the range with a failure to requalify notice provided by the department.

6VAC20-171-290. ~~Instruction exceptions~~ Instructor alternatives.

A. Subject matter specialist.

1. Training schools may employ or otherwise utilize individuals as subject matter specialists to provide instruction in specific areas of a training curriculum. During the approved portions of training, a certified instructor is not required to be present.

2. The training school shall obtain written authorization from the department prior to any subject matter specialist providing instruction. Written authorization may be requested by submitting on a form provided by the department:

a. A written request for authorization specifically outlining the requested subject matter; and

b. Documentation that supports the individual's credentials for instructing in the proposed subject matter.

3. The department may issue a written authorization for a period not to exceed 24 months.

B. Guest lecturer. Training schools may employ or otherwise utilize individuals as guest lecturer in specific areas of a training curriculum. A certified instructor is required to be present during all portions of training conducted by a guest lecturer.

6VAC20-171-300. Private security services training session.

A. Training sessions will be conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be submitted to the department. ~~All notifications shall be received by the department, or postmarked if mailed, no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. Session notifications require no fee from the training school. A notification to conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.~~

~~2. Notification of any changes to the dates, times, location or cancellation of a future training session must be submitted to the department in writing and received by the department at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately followed by a cancellation in writing as soon as practical.~~

2. All current training material to include course outline and training objectives must be approved by the department prior to offering a course of instruction for enrollment.

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

a. A unique training completion number;

b. The name, a unique identification number, and address of the individual;

c. The name of the particular course that the individual completed;

d. The dates of course completion/test passage;

e. An expiration date. Training completion forms shall expire 12 months from the date of course completion;

f. The name, address, telephone number, and training school certification number; and

g. The name, signature, and DCJS identification number of the school director and primary instructor.

4. In a manner approved by the department, the training school director shall submit an original training completion roster to the department affirming each student's successful completion of the session. ~~The training completion roster shall be received by the department within seven calendar days, or postmarked if mailed, no later than five business days following the training completion date. The training completion roster for each session must be accompanied by the applicable, nonrefundable processing fee.~~

5. A written examination shall be administered at the conclusion of each entry level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of ~~80% for compliance agent entry level training or~~ 70% for all ~~other~~ entry-level training examinations and any applicable practical exercises, to satisfactorily complete the training session.

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

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

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

~~9. To successfully complete the private investigator entry level training session, the individual must:~~

~~a. Successfully complete each of the four graded practical exercises required; and~~

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

~~10. To successfully complete the personal protection specialist entry level training session, the individual must:~~

~~a. Complete each of the five graded practical exercises required under protective detail operations pursuant to 6VAC20-171-350 E 6 (the practical exercises must be successfully completed prior to the written examination); and~~

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

~~11. The unarmed security officer must:~~

~~a. Complete the required training; and~~

~~b. Successfully pass the written examination with a minimum score of 70%.~~

9. To successfully complete the advanced firearms range training, the individual must achieve a minimum qualification score of 92% of the scoring value of the target.

10. To successfully complete the patrol rifle firearms range training, the individual must achieve a minimum qualification score of 85% of the scoring value of the target.

C. Attendance.

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

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. ~~Such~~ All training must be completed within ~~60 days after the completion of the training session or at the next available session offered by the training school~~ the 12 months prior to application of a registration or certification. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals ~~that~~ who do not successfully complete the compulsory minimum training standards of the training session shall not be ~~reported to the department except where required pursuant to this chapter~~ issued a training completion form or training certificate.

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

D. Standards of conduct.

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

2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter and must be present for all periods of instruction.

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

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

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

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

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

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

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

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

11. There will be no live ammunition permitted in the classroom.

~~Article 3~~
~~Private Security Services Registered Personnel~~

6VAC20-171-305. ~~General requirements~~ On-line in-service training programs.

~~All registered personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.~~

On-line training programs may only be offered for compulsory minimum in-service training requirements. On-line training programs shall meet the following requirements:

1. All on-line schools shall maintain a private security services training school certification in good standing and meet all of the administrative requirements and standards of conduct specified in this chapter.

2. All current on-line training material to include complete course content and performance objectives of mandated compulsory training requirements must be approved by the department prior to offering a course of instruction for enrollment.

3. Students enrolled in an on-line training program shall successfully complete all course material within 30 days of the first log-on to the training school website or prior to the registration or certification expiration date or final reinstatement date, whichever comes first.

4. Training schools offering on-line courses that accept credit card payments shall subscribe to an e-commerce solution service to protect the security and integrity of the monetary transaction.

5. The training software programs used by a certified training school shall allow the department auditing access to the training system. Such auditing access shall be available 24 hours a day, seven days a week.

6. The training software program shall be capable of generating a unique electronic notification of training completion for each student completing the course requirements and each course of instruction on a 24-hour a day basis.

7. The training of completion shall include the following:

a. A unique training completion number;

b. The name, a unique identification number, and address of the individual;

c. The name of the particular course that the individual completed;

d. Dates of course completion/test passage;

e. Name, address, telephone number, and license number of the training school; and

f. Name, signature, and DCJS identification number of the school director and primary instructor.

8. The training software program shall be capable of generating a training certificate for each student and each course of instruction that can be printed by the student's computer and printer. This training certificate shall only be made available to the student upon successful completion of all course material.

9. The training software program shall be capable of capturing and archiving student information for a period of not less than three years.

10. Training schools offering on-line training courses will designate one individual as the network administrator for that school's network server. The network administrator will be the technical contact between the department and the training school. Upon termination of the services of the designated network administrator, a new administrator shall be designated and notification made to the department within 10 days after effective date of the change.

6VAC20-171-308. Detector canine handler examiners administrative requirements and standards of conduct.

A. Administrative requirements. An examiner shall:

1. Maintain at all times with the department his email address and mailing address. Written notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Inform the department, and the business or training school for which the individual is employed, if applicable, in writing within 10 days after being arrested for a crime by any court, pleading guilty or nolo contendere, and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

3. Inform the department, and the business or training school for which the individual is employed, if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

4. Satisfy all judgments to include binding arbitrations related to private security services not provided.

5. Notify the department within 10 calendar days following termination of his employment as an examiner for a business or training school.

6. Conduct examinations pursuant to the requirements established by the department.

7. Notify the department within 10 calendar days following termination of any certification as a detector canine handler examiner or equivalent with any national organization, unit of the United States military, or other formal entity involved with certifying, training or setting standards for detection canines.

8. Notify the department in writing within 10 calendar days of determining that a detector canine handler or detector canine fails to successfully complete the certification examination.

9. Maintain documentation and a photograph of the examined detector canine team for three years for all examinations conducted that verifies compliance with requirements pursuant to the Code of Virginia and this chapter.

10. Utilize only department-approved certification examinations for the testing and certification of detector canine teams.

B. Standards of conduct. An examiner shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

4. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

5. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

6. Not engage in acts of unprofessional conduct in the practice of private security services.

7. Not engage in acts of negligent or incompetent private security services.

8. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

9. Not violate any state or local ordinances relating to private security services.

10. Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

11. Not provide false or misleading information to representatives of the department.

12. Not refuse to cooperate with an investigation being conducted by the department.

13. Not provide materially incorrect, misleading, incomplete, or untrue information in a certification application, renewal application, or any other document filed with the department.

14. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.

6VAC20-171-310. Registered personnel administrative requirements.

A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Maintain at all times with the department his mailing address, e-mail address and phone number, if applicable. Written notification of any change in mailing address, e-mail address or phone number shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after being arrested for a crime in any jurisdiction, pleading guilty or nolo contendere ~~or~~ and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

4. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

5. Inform the department, and the compliance agent of the licensee if employed by a private security services

business, of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise. This report shall be made within 24 hours of the incident.

6VAC20-171-320. Registered personnel standards of conduct.

A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

3. Not commit any act or omission that results in a private security license, registration or certification being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

4. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

5. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

6. Not solicit or contract to provide any private security services without first having obtained a private security services business license with the department.

7. ~~Carry~~ Be in possession of a valid registration card or valid temporary ~~authorization~~ registration letter at all times while on duty. Individuals requiring registration as an unarmed security officer, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative or an electronic security technician may be employed for not more than 90 consecutive days in any category listed above while completing the compulsory minimum training standards and may not be employed in excess of 120 days without having been issued a registration or an exception from the department.

8. ~~Carry~~ Be in possession of the private security state issued photo registration identification card at all times while on duty once the authorization has been approved from the department, except those individuals operating outside the Commonwealth of Virginia who shall obtain the state issued photo identification card prior to providing services when physically located in the Commonwealth.

9. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in § 9.1-140 of the Code of Virginia.

10. Possess a valid firearms training endorsement if he carries or has access to firearms while on duty and then only those firearms by type of action and caliber to which he has been trained on and is qualified to carry. Carry or have access to a patrol rifle while on duty only with the expressed written authorization of the licensed private security services business employing the registrant.

11. Carry a firearm concealed while on duty only with the expressed written authorization of the licensed private security services business employing the registrant and only in compliance with § 18.2-308 of the Code of Virginia.

12. Transport, carry and utilize firearms while on duty only in a manner that does not endanger the public health, safety and welfare.

13. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest.

14. Engage in no conduct which shall mislead or misrepresent through word, deed or appearance ~~suggests~~ that a registrant is a law-enforcement officer, or other government official.

15. Display one's registration while on duty in response to the request of a law-enforcement officer, department personnel or client.

16. Not perform any unlawful or negligent act resulting in a loss, injury or death to any person.

17. If a uniform is required, wear the uniform required by his employer. If wearing a uniform while employed as an armed security officer, unarmed security officer, alarm respondent or armored car personnel, that uniform must:

a. Include at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name

attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Include no patch or other writing (i) containing the word "police" or any other word suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. ~~This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words that accurately represent that distinction.~~

18. When providing services as a central station dispatcher, attempt to verify the legitimacy of a burglar alarm activation by contacting an authorized individual at the site where an alarm signal originated before dispatching authorities. This shall not apply if the alarm user has provided written authorization requesting immediate dispatch. This shall not apply to duress or hold-up alarms.

19. Act only in such a manner that does not endanger the public health, safety and welfare.

20. Not represent as one's own a registration issued to another individual.

21. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director or instructor.

22. Not provide information obtained by the registrant or his employing firm to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or from the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

23. Not engage in acts of unprofessional conduct in the practice of private security services.

24. Not engage in acts of negligent or incompetent private security services.

25. Not make any misrepresentation or make a false promise to a private security services business client or potential private security services business client.

26. Satisfy all judgments to include binding arbitrations related to private security services not provided.

27. Not provide false or misleading information to representatives of the department.

28. Not refuse to cooperate with an investigation being conducted by the department.

29. Not provide materially incorrect, misleading, incomplete, or untrue information on a registration application, renewal application, or any other document filed with the department.

30. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.

Part V
Compulsory Minimum Training Standards for Private Security Services ~~Business Personnel~~ Registrations

Article 1
~~Registration/Certification~~ Registration Category Requirements

6VAC20-171-350. Entry level training.

A. Each person employed by a private security services business or applying to the department for registration as an unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, explosives detector canine handler, narcotics detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant as defined by § 9.1-138 of the Code of Virginia~~, or for certification as a compliance agent as required by § 9.1-139 of the Code of Virginia, who has not met the compulsory minimum training standards prior to July 13, 1994,~~ must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with this chapter.

B. Training will be credited only if application for registration ~~or certification~~ is ~~submitted to~~ received by the department within 12 months of completion of training.

C. ~~Hour~~ Course and minimum hour requirement. The compulsory minimum entry level training courses and specific minimum hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Unarmed security officer – 18 hours

a. 10E: Private Security Orientation – 2 hours

b. 01E: Security Officer Core Subjects – 16 hours

2. Armed security officer/courier ~~– 40 hours~~ – 50 hours (54 hours including shotgun training)

~~*There are 8 hours of Arrest Powers, Policies, Procedures that are included in the Armed Security Officer Training. These 8 hours are mandatory for armed security officers only.~~

a. 10E: Private Security Orientation – 2 hours

b. 01E: Security Officer Core Subjects – 16 hours

c. 05E: Armed Security Officer Arrest Authority – 8 hours

d. 075E: Basic Handgun – 24 hours

e. 08E: Entry-level Shotgun – 4 hours (if applicable*) * To also have access to a shotgun while on duty, the additional shotgun course is required.

3. Armored car personnel – 26 hours (30 hours with shotgun)

a.10E: Private Security Orientation – 2 hours

b. 03E: Armored Car Procedures – 10 hours

c. 07E: Fundamental Handgun – 14 hours

d. 08E: Entry-level Shotgun – 4 hours (if applicable*) * To also have access to a shotgun while on duty, the additional shotgun course is required.

4. Security canine handler – 30 hours (excluding basic obedience training)

a. 10E: Private Security Orientation – 2 hours

b. 01E: Security Officer Core Subjects – 16 hours (prerequisite for 04ES)

c. Prerequisite for 04ES – Basic Obedience Training

d. 04ES: Security Canine Handler – 12 hours

5. Private investigator – 60 hours

a. 10E: Private Security Orientation – 2 hours

b. 02E: Private Investigator Subjects – 58 hours

6. Personal protection specialist – 60 hours

a. 10E: Private Security Orientation – 2 hours

b. 02E: Personal Protection Specialist – 58 hours

c. 075E: Basic Handgun – 24 hours (prerequisite for 09E Advanced Handgun)

d. 09E: Advanced Handgun – 14 hours (for armed personal protection specialists)

7. Alarm respondent – 18 hours

a. 10E: Private Security Orientation – 2 hours

b. 01E: Security Officer Core Subjects – 16 hours

8. Central station dispatcher – 8 hours

a. 10E: Private Security Orientation – 2 hours

b. 30E: Electronic Security Core Subjects – 2 hours

c. 38E: Central Station Dispatcher – 4 hours

9. Electronic security sales representative – 8 hours

a. 10E: Private Security Orientation – 2 hours

b. 30E: Electronic Security Core Subjects – 2 hours

c. 39E: Electronic Security Sales – 4 hours

10. Electronic security technician – 14 hours

a. 10E: Private Security Orientation – 2 hours

b. 30E: Electronic Security Core Subjects – 2 hours

c. 35E: Electronic Security Technician – 10 hours

11. Electronic security technician's assistant – 4 hours

a. 10E: Private Security Orientation – 2 hours

b. 30E: Electronic Security Core Subjects – 2 hours

12. Detector Canine Handler – 160 hours (excluding certification examination)

a. 10E: Private Security Orientation – 2 hours

b. 04ED: Detector Canine Handler – 158 hours

c. Certification exam by a Certified Detector Canine Handler Examiner

13. Locksmith – 18 hours

a.10E: Private Security Orientation – 2 hours

b. 25E: Locksmith – 16 hours

~~12. Compliance agent – 6 hours~~

D. Course content. The compulsory minimum entry level training course content by ~~category~~ specific course, excluding examinations, mandated practical exercises and range qualification~~,~~ shall be as provided in this subsection.

1. Private Security Orientation (10E) – 2 Hours (excluding examination)

a. Introduction to private security

b. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

c. Written comprehensive examination

This session is a requirement for all registration categories. However, an individual applying for more than one category of registration or adding an additional category shall only be required to take this training one time within 12 months of submitting application.

~~1.~~ 2. Security officer core subjects. (01E) – 16 hours (excluding examination)

The entry level curriculum for unarmed security officer, armed security officer/courier, security canine handler, and alarm respondent sets forth the following areas identified as:

~~a. Orientation – 2 hours~~

~~(1) Virginia law and regulations~~

~~(2) Code of ethics~~

~~(3) General duties and responsibilities~~

~~b.~~ a. Law ~~– 4 hours~~

~~c.~~ b. Security patrol, access control and communications ~~– 2 hours~~

~~d.~~ c. Documentation ~~– 4 hours~~

~~e.~~ d. Emergency procedures ~~– 4 hours~~

~~f.~~ e. Confrontation management ~~– 2 hours~~

f. Use of force

g. Written comprehensive examination

~~Total hours (excluding exam) – 18~~ 16 hours

~~2. Armed security officer/courier.~~ 3. Armed Security Officer Arrest Authority (05E) – 8 hours (excluding examination)

a. Arrest powers, policies and procedures

b. Written comprehensive examination

~~a. Security officer core subjects – 18~~ 16 hours

~~b. Entry level handgun training (refer to Article 2 (6VAC20-171-365 et seq.) of this part) – 14 hours (includes dry fire, and judgmental shooting and low level light shooting familiarization)~~

~~c. Arrest powers, policies, procedures – 8 hours~~

~~d. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20-171-365 et seq.) of this part) – 2 hours~~

~~Total hours (excluding examinations, shotgun classroom instruction and range qualification) – 40 hours~~

~~3.~~ 4. Armored car personnel. (03E) – 10 hours (excluding examination)

~~a. Administration and armored car orientation – 1 hour~~

~~b. Applicable sections of the Code of Virginia and DCJS regulations – 1 hour~~

~~c.~~ a. Armored car procedures ~~– 10 hours~~

~~d.~~ b. Written comprehensive examination

~~e. Entry level handgun training (refer to Article 2 (6VAC20-171-365 et seq.) of this part) – 14 hours (includes 4 hours of range dry fire and low level lighting)~~

~~f. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20-171-365 et seq.) of this part) – 2 hours~~

~~Total hours (excluding examinations, shotgun classroom instruction and range qualification) – 26 hours~~

~~4.~~ 5. Security canine handler. (04ES) 20 hours (excluding examination and basic obedience training)

a. Prerequisites for security canine handler entry level (official documentation required): Successful completion of basic obedience training.

b. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards

c. Evaluation by a certified private security canine handler instructor and basic obedience retraining

d. Security canine handler orientation/legal authority

e. Canine patrol techniques

f. Written comprehensive examination

~~Complete entry level training requirements pursuant to Article 3 (6VAC20-171-430 et seq.) of this part.~~

~~5.~~ 6. Private investigator. (02E) – 58 hours (excluding examination and practical exercises)

a. ~~Orientation: applicable sections of the Code of Virginia; Administrative Code 6VAC20-171; standards~~ Standards of professional conduct; and ethics ~~– 6 hours~~

b. Law: basic law; legal procedures and due process; civil law; criminal law; evidence; and legal privacy requirements ~~– 16 hours plus one practical exercise~~ – one practical exercise

c. General investigative skills, tools and techniques: surveillance; research; and interviewing ~~– 16 hours plus one practical exercise~~ – one practical exercise

d. Documentation: Report preparations; photography; audio recording; general communication; and courtroom testimony ~~– 8 hours plus one practical exercise~~ – one practical exercise

e. Types of investigations: accident; insurance; background; domestic; undercover; fraud and financial; missing persons and property; and criminal ~~– 14 hours plus one practical exercise~~ – one practical exercise

f. Written comprehensive examination

~~Total hours in classroom (excluding written examination and practical exercises) – 60 hours~~

~~6.~~ 7. Personal protection specialist. (32E) – 58 hours (excluding written examination and practical exercises)

a. Administration and personal protection orientation ~~– 3 hours~~

~~b. Applicable sections of the Code of Virginia and DCJS regulations – 1 hour~~

~~c.~~ b. Assessment of threat and protectee vulnerability ~~– 8 hours~~

~~d.~~ c. Legal authority and civil law ~~– 8 hours~~

~~e.~~ d. Protective detail operations ~~– 28 hours~~

~~f.~~ e. Emergency procedures ~~– 12 hours~~

(1) ~~CPR~~ Medical procedures

(2) ~~Emergency first aid~~ Defensive preparedness

~~(3) Defensive preparedness~~

~~g.~~ f. Performance evaluation –Five practical exercises

~~h.~~ g. Written comprehensive examination

~~Total hours (excluding written examination and performance evaluation) – 60 hours~~

~~7. Alarm respondent.~~

~~Security officer core subjects – 18 hours~~

8. Electronic security core subjects. (30E) – 2 hours (excluding examination) ~~The entry level electronic security subjects curriculum for central station dispatcher, electronic security sales representative, electronic security technician and electronic security technician's assistant sets forth the following areas identified as:~~

~~a. Administration and orientation to private security – 1 hour~~

~~b. Applicable sections of the Code of Virginia and DCJS regulations – 1 hour~~

~~c.~~ a. Overview of electronic security ~~– 1 hour~~

~~d.~~ b. False alarm prevention ~~– 1 hour~~

~~e.~~ c. Written comprehensive examination

~~Total hours (excluding examination) – 4 hours~~

9. Central station dispatcher. (38E) – 4 hours (excluding examination)

~~a. Electronic security subjects – 4 hours~~

~~b.~~ a. Central station dispatcher subjects ~~– 4 hours~~

(1) Duties and responsibilities

(2) Communications skills

(3) Emergency procedures

~~c.~~ b. Written comprehensive examination

~~Total hours (excluding examination) – 8 hours~~

10. Electronic security sales representative. (39E) 4 hours (excluding examination)

~~a. Electronic security subjects – 4 hours~~

~~b.~~ a. Electronic security sales representative subjects ~~– 4 hours~~

(1) Duties and responsibilities

(2) System design/components

(3) False alarm prevention

~~c.~~ b. Written comprehensive examination

~~Total hours (excluding examination) – 8 hours~~

11. Electronic security technician. (39E) – 4 hours (excluding examination)

~~a. Electronic security subjects – 4 hours~~

~~b.~~ a. Electronic security technician subjects – 10 hours

(1) Duties and responsibilities

(2) Electronics

(3) Control panels

(4) Protection devices and application

(5) Test equipment

(6) Power and grounding

(7) National electrical code

(8) Job safety

~~c.~~ b. Written comprehensive examination

~~Total hours (excluding examination) – 14 hours~~

~~12. Compliance agent.~~

~~a. Industry overview and responsibilities~~

~~b. Regulations review~~

~~c. Business practices and ethical standards~~

~~d. Records requirements and other related issues~~

~~e. Written examination~~

~~Total hours (excluding written examination) – 6 hours~~

12. Detector Canine Handler (04ED) – 158 hours to include practical exercises (excluding certification exam)

a. Introduction/orientation/administration

(1) Code of Ethics

(2) General Duties and Responsibilities

(3) Legal

b. Working Canines

(1) Historical Perspective

(2) Terms and Definitions

(3) Methodology and Application

(4) Training Documentation

(5) Search Patterns

c. Basic Canine Handling (including practical exercises)

(1) Training

(2) Care and Health

(3) Emergency Medical Care

d. Detector Canine Deployment

Canine Behavior: Reading and Understanding

e. Explosive or Narcotics Familiarization (including practical exercises)

(1) Illegal Narcotics Familiarization

(2) Explosives Substance and I.E.D. Familiarization

(3) Safety

f. Written comprehensive exam

13. Locksmith (25E) – 16 hours (excluding examination)

a. Orientation to Locksmithing

(1) History of locksmithing

(2) Ethics

(3) Trade resources

(4) Terminology

(5) Professional conduct

(6) Job safety

b. Public Safety Codes

(1) NFPA (80, 101)

(2) Overview of Authorities Having Jurisdiction (AHJs)

(3) ADA

(4) Terminology

(5) Safety code resources

c. Technical Applications – 10 hours

Terminology (to include definition/purpose/function)

(a) Locks/types

(b) Handing

(c) Master keying

(d) Key records and codes

(e) Key blanks and keyways

(f) Physical security

(g) Types of client sites

(h) Safes/vaults

(i) Access control

(j) Handling restricted keys

(k) Door system components

(l) Automotive

(m) Written comprehensive examination

6VAC20-171-360. In-service training.

A. Each person registered with the department as an armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, narcotics detector canine handler, explosives detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, unarmed security officer or electronic security technician's assistant, ~~or certified by the department to act as a compliance agent~~ shall complete the compulsory in-service training standard once during each 24-month period of registration or certification.

~~1. Compliance agent.~~

~~a. In-service training must be completed within 12 months immediately preceding the expiration date.~~

~~b. Individuals who fail to complete in-service training prior to the established expiration date may complete in-service training within 30 days after the expiration date if a completed in-service training enrollment application and a $25 delinquent training fee is received by the department.~~

~~2. Instructor. All private security instructors must complete instructor in-service training within 12 months immediately preceding the individual's expiration date.~~

B. ~~Hour~~ Course Content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement by category, excluding examinations, practical exercises and range qualification, shall be as follows:

1. Unarmed security officer: (01I) Security Officer Core Subjects In-Service – 4 hours

a. Legal authority

b. Job-related training

2. Armed security officer/courier (01I) Security Officer Core Subjects In-Service – 4 hours (not including range retraining)

a. Legal authority

b. Job-related training

3. Armored car personnel (03I) Armored Car Personnel In-Service – 4 hours

Job-related training

4. Security canine handler (04IS) Security Canine Handler In-Service – 8 hours

a. Basic obedience evaluation and retraining

b. Canine grooming, feeding, and health care

c. Apprehension techniques

d. Obedience

5. Private investigator (02I) Private Investigator In-Service – 8 hours

Job-related training

6. Personal protection specialist (32I) Personal Protection Specialist In-Service – 8 hours (not including range retraining for armed)

Job-related training

7. Alarm respondent (01I) Security Officer Core Subjects In-Service – 4 hours

a. Legal authority

b. Job-related training

8. Central station dispatcher (38I) Central Station Dispatcher In-Service – 4 hours

Job-related training

9. Electronic security sales representative (39I) Electronic Sales Representative In-Service – 4 hours

Job-related training

10. Electronic security technician (35I) Electronic Technician In-Service – 4 hours

Job-related training

11. Electronic security technician's assistant (30I) Electronic Security Subjects In-Service – 2 hours

Job-related training

12. ~~Compliance agent – 4 hours~~ Detector canine handler (04ID) Detector Canine Handler In-Service – 8 hours (excluding certification exam)

a. Detector canine team retraining and problem solving

b. Search techniques

c. Terrorist/criminal intelligence update and team safety

d. Certification exam (conducted by a certified detector canine handler examiner)

13. ~~Firearms instructor – 4 hours~~ Locksmith (25I) Locksmith In-Service – 4 hours

Job-related training

~~14. General instructor – 4 hours~~

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

~~1. Security officer core subjects: Unarmed security officer/armed security officer/courier/alarm respondent~~

~~a. Legal authority – 2 hours~~

~~b. Job-related training – 2 hours~~

~~Total hours – 4 hours~~

~~2. Armored car personnel~~

~~Job-related training – 4 hours~~

~~Total hours – 4 hours~~

~~3. Security canine handler (annual requirement per 6VAC20-171-440)~~

~~a. Basic obedience evaluation and retraining – 4 hours~~

~~b. Job-related training – 4 hours~~

~~Total hours – 8 hours~~

~~4. Private investigator~~

~~Job-related training – 8 hours~~

~~Total hours – 8 hours~~

~~5. Personal protection specialist~~

~~Job-related training – 8 hours~~

~~Total hours – 8 hours~~

~~6. Central station dispatcher~~

~~Job-related training – 4 hours~~

~~Total hours – 4 hours~~

~~7. Electronic security sales representative~~

~~Job-related training – 4 hours~~

~~Total hours – 4 hours~~

~~8. Electronic security technician~~

~~Job-related training – 4 hours~~

~~Total hours – 4 hours~~

~~9. Electronic security technician's assistant~~

~~Job-related training – 2 hours~~

~~Total hours – 2 hours~~

~~10. Compliance agent~~

~~a. Industry overview and responsibilities~~

~~b. Regulations review~~

~~c. Business practices and ethical standards~~

~~d. Records requirements and other related topics~~

~~Total hours -- 4 hours~~

~~11. General instructor~~

~~a. Regulations review and legal issues~~

~~b. Ethical standards~~

~~c. Records requirements and other related topics~~

~~d. Techniques of instruction delivery, including practical exercises~~

~~Total hours -- 4 hours~~

~~12. Firearms instructor~~

~~a. Legal issues~~

~~b. Techniques of delivery of instruction and other related topics~~

~~Total hours -- 4 hours~~

Article 2
Firearms Training Requirements

6VAC20-171-365. General firearms training requirements.

A. Firearms training endorsement is required for all private security services business personnel who carry or have immediate access to a firearm while on duty. Each person who carries or has immediate access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person registered as armored car personnel, security canine handler, detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant must complete fundamental handgun training in order to apply for a firearms endorsement.

C. Each person applying for a registration as an armed security officer/courier must complete basic handgun training in order to apply for a firearms endorsement.

D. Each person registered as a personal protection specialist must complete basic handgun training and advanced handgun training in order to apply for a firearms endorsement.

6VAC20-171-370. ~~Entry level~~ Fundamental handgun training.

A. Handgun classroom training.

1. The ~~entry level~~ fundamental handgun classroom training will include but not be limited to the following:

~~a. The proper care and maintenance of the firearm;~~

~~b. Civil liability of the use of firearms;~~

~~c. Criminal liability of the use of firearms;~~

~~d. Firearms retention and storage;~~

~~e. Deadly force;~~

~~f. Justifiable deadly force;~~

~~g. Range safety;~~

~~h. Principles of marksmanship;~~

~~i. Practical firearms handling and safety;~~

~~j. Judgmental shooting; and~~

~~k. Low level light shooting familiarization.~~

a. Practical handgun handling

(1) Identification of handgun parts

(2) Draw

(3) Reholstering

(4) Ready position

(5) Loading

(6) Administrative loading

(7) Unloading

(8) Administrative

(9) Malfunctions

(10) Immediate actions procedures

(11) Feedway clearance procedures

(12) Proper care and maintenance

(13) Firearms retention

(14) Ammunition identification and management

(15) Range safety

b. Fundamentals of marksmanship

(1) Grip

(2) Stance (position)

(3) Sight alignment

(4) Sight picture

(5) Trigger control

(6) Breathing

(7) Follow through

c. Dim light/low light/reduced light practice and familiarization

(1) Hours of darkness

(2) Identification of target/threat/background

(3) Unaided training

(4) Aided training

(5) Flashlight use

(6) Reloading during low light conditions

(7) Malfunctions

(8) Range safety

d. Use of force

e. Criminal and civil liability

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom/range

g. Lead exposure

Total Hours (excluding written examination) –14 hours

2. Written examination required.

~~B. Range qualification (no minimum hours). The purpose of the range qualification course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.~~

~~1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training. Equipment needed: handgun, belt with directional draw holster, ammunition (60 rounds)~~

~~2. Factory loaded practice or duty ammunition (60 rounds) may be used for practice or range qualification.~~

~~3. Course shall be fired double action, or double single action except for single action semi-automatic handguns.~~

~~4. All qualifications shall be conducted using a B-27 silhouette target or the FBI "Q" target. Alternate targets may be utilized with prior approval by the department.~~

~~5. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.~~

~~6. A certified firearms instructor must be present on the range directly controlling the fire line during all phases of firearms training. There shall be a minimum of one certified firearms instructor per five shooters on the line.~~

~~7. All individuals shall qualify with directional draw holsters only.~~

~~8. The range qualification of individuals shall be scored as follows:~~

~~B27 target: (use indicated K value) 7, 8, 9, 10 X rings — value 5 points, other hits on silhouette — value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., 225 / 300 = .75 = 75%.~~

~~FBI Q target: all hits inside the bottle — value 5 points; hits outside the bottle — value 0 points.~~

~~9. The low light range/familiarization of individuals shall be scored as indicated above. This is strictly a familiarization course with no pass or fail grade provided.~~

~~C. Course: Virginia Private Security Course of Fire for Handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in subsection B of this section. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:~~

~~1. Phase 1; 3 yards, utilizing weaver, modified weaver, or isosceles stance, 18 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, draw and fire 2 rounds (3 seconds), repeat.~~

~~c. Load 6 rounds and holster loaded firearm.~~

~~d. On command, draw and fire 6 rounds with strong hand.~~

~~e. Unload, reload 6 rounds and fire 6 rounds with weak hand (25 seconds).~~

~~2. Phase 2; 7 yards, utilizing weaver, modified weaver, or isosceles stance, 24 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, draw and fire 1 round (2 seconds), repeat.~~

~~c. Load 6 rounds and holster loaded firearm.~~

~~d. On command, draw and fire 2 rounds (3 seconds), repeat.~~

~~e. Load 6 rounds and holster loaded firearm.~~

~~f. On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds).~~

~~3. Phase 3; 15 yards, 70 seconds, 18 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, assume kneeling position, draw and fire 6 rounds with strong hand.~~

~~c. Assume standing position, unload, reload and fire 6 rounds from weak hand barricade position.~~

~~d. Unload, reload and fire 6 rounds from strong hand barricade position (Kneeling position may be fired using barricade position.) (70 seconds).~~

~~D. Low Light Course: Virginia Private Security Low Light Familiarization Course of Fire for Handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, handgun, two speed loaders or three magazines, range ammunition (30 rounds). Equipment provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:~~

~~1. Phase 1; 3 yards, utilizing weaver or isosceles stance, 18 rounds:~~

~~a. Load 6 rounds and come to ready.~~

~~b. On command, fire 2 rounds (3 seconds) repeat.~~

~~c. Load 6 rounds and come to ready.~~

~~d. On command, fire 6 rounds with strong hand.~~

~~e. Unload, reload 6 rounds and fire 6 rounds (30 seconds).~~

~~2. Phase 2; 7 yards, utilizing weaver or isosceles stance, 12 rounds:~~

~~a. Load 6 rounds and come to ready.~~

~~b. On command, fire 2 rounds (5 seconds), and repeat.~~

~~c. Load 6 rounds and come to ready.~~

~~d. On command, draw and fire 3 rounds (6 seconds), and repeat.~~

6VAC20-171-375. Basic handgun training.

Handgun classroom training.

1. The basic handgun classroom training will include but not be limited to the following:

a. Practical handgun handling

(1) Identification of handgun parts

(2) Draw

(3) Reholstering

(4) Ready position

(5) Loading

(6) Administrative loading

(7) Tactical reloading

(8) Rapid reloading

(9) Unloading

(10) Administrative

(11) Malfunctions

(12) Immediate actions procedures

(13) Feedway clearance procedures

(14) Proper care and maintenance

(15) Firearms retention

(16) Ammunition identification and management

(17) Range safety

b. Fundamentals of marksmanship

(1) Grip

(2) Stance (position)

(3) Sight alignment

(4) Sight picture

(5) Trigger control

(6) Breathing

(7) Follow through

c. Dim light/low light/reduced light practice and familiarization

(1) Hours of darkness

(2) Identification of target/threat/background

(3) Unaided training

(4) Aided training

(5) Flashlight use

(6) Reloading during low light conditions

(7) Malfunctions

(8) Range safety

d. Use of force

(1) Deadly force

(2) Justifiable deadly force

e. Liability

(1) Criminal liability

(2) Civil liability

(3) Negligent discharge prevention

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom/range

(1) Shoot/don't shoot judgment

(2) Turn and fire drills

(3) Failure to stop drills

(4) Multiple target drills

g. Lead exposure

Total Hours (excluding written examination) —24 hours

2. Written examination required.

6VAC20-171-376. Handgun range qualification.

A. Range qualification (no minimum hours). The purpose of the range qualification course is to provide practical firearms training and qualification to individuals desiring to become armed private security services business personnel.

1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training. Equipment needed: handgun, belt with directional draw holster, i.e., one that is worn on the same side of the body as the shooting hand, two speed loaders or three magazines, ammunition (48 rounds)

2. Each student will fire a minimum of 24 rounds of factory loaded ammunition prior to qualification. (There is no course of fire; it is at the firearms instructor's discretion on how the round will be utilized.)

3. Course shall be fired double action or double single action, except for single action semi-automatic handguns.

4. All qualifications shall be conducted using a B-27 silhouette target or the FBI "Q" target. Alternate targets may be utilized with prior approval by the department.

5. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

6. A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

7. The range qualification of individuals shall be scored as follows:

a. B27 target: (use indicated K-value) 7, 8, 9, 10 X rings —value 5 points, other hits on silhouette —value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., 225 ÷ 300 =.75 = 75%.

b. FBI Q target: all hits inside the bottle —value 5 points; hits outside the bottle —value 0 points.

8. The low light range/night time practice and familiarization course of fire.

B. Course: Virginia private security course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Strong support hand refers to the primary hand used in firing the firearm. All magazines will be loaded to maximum capacity; it will be the responsibility of the student to change magazines as required. Magazine change refers to tactical reloading/reloading refers to when the magazine is depleted. The course of fire shall be conducted in the following phases and scored as follows:

1. Rounds: 48 rounds duty ammunition or equivalent

Initial magazine loading: magazine and speed reloaders loaded to capacity.

Ammunition management: shooter is responsible for maintaining a loaded handgun, performing speed reloads/tactical reloads as necessary. Running out of ammunition during a stage is not a valid alibi.

Target: B-27 or FBI Q target

Scoring: B27 target: 7, 8, 9, 10 X rings-value 5 points, other hits on silhouette-value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., 190 ÷ 250 = .76 = 76%.

FBI Q target: all hits inside the bottle – value 5 points; hits outside the bottle – value 0 points.

Total possible: 250 points

Minimum score: 190 (76%) 38 hits

Firing position: all rounds will be fired from a two-handed standing position unless noted otherwise.

Reholster: all reholstering will be done on command.

Start position: handgun secured in approved holster, interview position and all spare magazines secured in duty pouches.

2. Magazines loaded to capacity. Shooter is responsible for maintaining a loaded handgun, performing speed reloads and topping off magazines as necessary. Running out of ammunition during a stage is not a valid alibi.

3. Phase 1: 3 yards, utilizing a proper stance, 18 rounds

On command, draw and fire:

a. 2 rounds (3 seconds), drop/scan and re-holster, repeat 3 times

b. 1 round (2 seconds), drop/scan and re-holster, repeat 6 times

c. 6 rounds (15 seconds), 3 rounds with the strong hand ONLY, transfer firearm the support hand and fire 3 rounds with the support hand ONLY, transfer to strong hand, drop/scan, re-holster.

4. Phase 2: 7 yards, utilizing a proper stance, 18 rounds

On command, draw and fire:

a. 1 round (2 seconds), drop/scan and reholster, repeat 6 times

b. 2 rounds (3 seconds), drop/scan and reholster, repeat 3 times

c. 6 rounds (10 seconds), drop/scan and reholster

5. Phase 3: 15 yards, kneeling position, 12 rounds

On command, draw and fire:

6 rounds kneeling strong side barricade position, reload and fire 6 rounds from the support barricade position (25 seconds)

C. Low light course: Virginia private security low light practice/familiarization course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, flashlight, handgun, two speed loaders or three magazines, range ammunition (24 rounds). Equipment provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases for practice and familiarization:

1. Target: B-27 or FBI Q target

2. Scoring: B27 target: 7, 8, 9, 10 X rings--value 5 points, other hits on silhouette--value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., 95 ÷ 120 = .79 = 79%.

3. FBI Q target: all hits inside the bottle – value 5 points; hits outside the bottle – value 0 points.

4. Phase I; 3 yards, utilizing a proper stance, 12 rounds:

a. Load magazines to full capacity and come to ready

b. On command, fire 2 rounds (3 seconds) repeat

c. On command, fire 6 rounds

(15 Seconds)

5. Phase 2; 7 yards, utilizing proper stance, 12 rounds

a. On command, fire 2 rounds (5 seconds), and repeat

b. On command, fire 3 rounds (6 seconds), and repeat

D. Alternate course of fire semi-automatic handguns

1. Firearms instructors are authorized to implement a substitute handgun qualification course for semi-automatic handguns that incorporate the following elements at a minimum:

a. All classroom instruction contained in subsection A of this section;

b. The targets used are either a B-27 silhouette target or FBI Q target;

c. All firing is initiated with the firearm in a directional draw holster;

d. The alternative course of fire will incorporate a minimum of 4 magazine changes;

e. Scoring will be the same as that contained in subdivision B 1 of this section;

f. There shall not be more than 5 students on the firing line for each certified firearms instructor present;

g. Firing distances shall be 3 yards, 7 yards, and 15 yards;

h. A total of 60 rounds of ammunition will be fired by each shooter; and

i. Course will incorporate strong hand and weak hand firing position.

2. Timing of firing in each stage will be similar to that imposed in the standard course of fire; i.e., 1 shot in 2 seconds, 2 shots in 3 seconds. Firearms instructors are allowed to decrease the time limits imposed in the standard course of fire, but may not exceed them.

3. Firearms instructors desiring to develop an alternate course of fire for semi-automatic handguns must submit the proposed course in writing to the department for approval prior to that alternate course being used for qualification firing.

4. An alternative course of fire for semi-automatics approved by the department will not be used to qualify or requalify shooters armed with a revolver.

6VAC20-171-380. Entry-level shotgun training.

A. Shotgun classroom training. Individual must first successfully complete entry-level handgun training. The entry level shotgun classroom instruction will emphasize but not be limited to:

~~1. Safe and proper use and handling of shotgun;~~

~~2. Nomenclature;~~

~~3. Positions and combat loading techniques;~~

~~4. Decision-making for the officer with the shotgun;~~

~~5. Transition from sidearm to shotgun; and~~

~~6. Shotgun retention and proper use of a sling.~~

~~Total hours -- 2 hours~~

1. Shotgun handling techniques

a. Identification of shotgun parts

b. Slings – traditional sling, single point sling, 3 point sling

c. Cruiser carry conditions

d. Cruiser safe

e. Chambering

f. Reloading

g. Transition from handgun to shotgun/shotgun to handgun (if applicable)

h. Malfunctions

(1) Immediate actions procedures

(2) Feedway clearance procedures

i. Proper care and maintenance

j. Shotgun retention

k. Ammunition management and identification

l. Range safety

m. Dim light/low light

2. Fundamentals of shotgun marksmanship

a. Grip

b. Stance (position)

c. Sight alignment

d. Sight picture

e. Trigger control

f. Breathing

g. Follow through

3. Written examination

Total hours excluding examination (4 hours)

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical shotgun training and qualification to those individuals who carry or have immediate access to a shotgun in the performance of their duties.

~~1. For certification, 12 gauge, double aught "00" buckshot ammunition shall be used. Five rounds.~~

~~2. Scoring 70% of available pellets must be within silhouette.~~

1. Fire a minimum of 10 prequalification rounds using 12 gauge, double aught "00" buckshot or rifle slug ammunition and 12 handgun rounds. Prequalification will include transition from handgun to shotgun and shotgun to handgun.

2. Fire 10 rounds of shotgun rounds (buckshot and/or rifled slugs if issued) on a daylight course using B27 single/multiple targets with 70% accuracy.

3. Fire 10 rounds of (buck-shot and/or rifled slugs if issued) using B27 single/multiple targets on a nighttime course with 70% accuracy.

4. Complete daylight and dim light shotgun practice and qualification courses with distance, positions, rounds, targets, and time limitations as described in subsection C of this section.

C. Course: Virginia Private Security Course of Fire for Shotguns.

~~Distance~~	~~Position~~	~~No. Rounds~~	~~Target~~	~~Time~~
~~Combat load & fire 15 Yds.~~	~~Standing/ Shoulder~~	~~3~~	~~B 27 Silhouette~~	~~20 sec.~~
~~Combat load & fire 25 Yds.~~	~~Kneeling/ Shoulder~~	~~2~~	~~B 27 Silhouette~~	~~15 sec.~~

Prequalification					
Condition	Distance	Position	Rounds	Target	Time
Cruiser Safe	15	Standing/shoulder/transition*	3 SG/3 HG	B27	25 sec
Open breach	15	Kneeling/shoulder	2	B27	15 sec
Cruiser Safe	25	Kneeling/shoulder/transition	3 SG/3 HG	B27	30 sec
Open breach	25	Standing/shoulder	2	B27	20 sec
Day Light Qualification					
Condition	Distance	Position	Rounds	Target	Time
Cruiser Safe	15	Standing/shoulder	3	B27	15 sec
Open breach reloading	15	Kneeling/shoulder	2	B27	10 sec
Cruiser Safe	25	Kneeling/shoulder	3	B27	20 sec
Open breach reloading	25	Standing/shoulder	2	B27	25 sec
Dim Light/Low Light Qualification					
Condition	Distance	Position	Rounds	Target	Time
Cruiser Safe	7	Standing/shoulder	3	B27	20 sec
Open breach reloading	7	Kneeling/shoulder	2	B27	15 sec
Cruiser Safe	15	Standing/shoulder	3	B27	25 sec
Open breach reloading	15	Kneeling/shoulder	2	B27	30 sec

D. A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms range training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

6VAC20-171-390. Advanced handgun training - required for the entry level personal protection specialist who wishes to have firearms endorsement and optional for other armed registrants.

A. The ~~entry level~~ basic handgun training is a prerequisite for taking the advanced handgun training.

B. Advanced handgun classroom training.

1. The advanced handgun training will include but not be limited to:

a. ~~Proper care of the weapon~~ Firearms safety;

b. Civil and criminal liability ~~of the use of firearms~~;

c. ~~Criminal liability of the use of firearms~~ Concealed carry law and authority;

d. ~~Weapons retention~~ Function of firearms in close protection operations;

e. ~~Deadly force~~ Deployment of firearms in close protection operations;

f. ~~Justifiable deadly~~ Use of force;

~~g. Range safety;~~

~~h. Practical firearms handling;~~

~~i.~~ g. Principles of advanced marksmanship; and

~~j.~~ h. Decision-making for the personal protection specialist.

Total hours (excluding written examination) ~~24 hours~~ – 14 hours

2. Written examination required.

C. Range qualification (no minimum hours). The purpose of this course of fire is to assess and improve the tactical, protection-related shooting skills for personal protection specialist candidates seeking certification to be armed. This course entails five increasingly challenging stages of advanced firearms exercises with a 92% score required for qualification.

1. The advanced handgun course of fire is comprised of the following exercises:

a. Shoot/don't shoot judgment;

b. Turn and fire drills;

c. Failure to stop drills;

d. Multiple target drills; and

e. Judgmental shooting.

2. For all range practicals (stage two through stage four):

a. The student will fire at a man-size silhouette target with the following requirements:

(1) 4-inch diameter circle in head;

(2) 8-inch diameter circle in chest/body area; and

(3) Center points of circles –13-1/2 inches apart.

b. All rounds fired must hit within these circles.

c. Minimum 92% qualification score = 25 rounds total requiring 23 hits. With regard to scoring:

(1) 25 points (1 round is good for 1 point).

(2) 92% of shots must be "in circle" hits for a passing grade (2 misses allowed on total course).

(3) Shots not taken during stage five when a "no-shoot" situation is presented scores a point, just as an accurate shot in a hostile situation.

(4) 92% is 23 of 25 possible.

3. A certified advanced handgun firearms instructor must be on the range during all phases of advanced handgun training. There shall be no less than one certified advanced handgun firearms instructor per four students.

D. Course: Virginia Private Security Advanced Handgun Course of Fire.

1. Stage One: Shoot/don't shoot drill. Stage one of the advanced handgun course of fire is conducted in a classroom using a 16 mm film or video cassette tape of firearms combat scenarios or in practical exercises on the range to assess the student's decision-making capability given job-related shoot/don't shoot incidents.

After the interaction of the scenario, the students must explain all their commands and actions.

Dry-fire response from a weapon rendered safe should be incorporated into the scenario interaction.

2. Stage Two: Turn-and-fire drill. Stage two of the advanced handgun course of fire is held at a firing range and consists of turn-and-fire drills from varying distances (straight draw hip holsters only).

All handguns are loaded with ~~six~~ 6 rounds of ammunition and safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," the students must quickly turn while acquiring a firm grip on the weapon. Once facing the target and in a stable position, they must safely draw and fire ~~two~~ 2 rounds at the designated target circle. After shooting, while facing the target, the student must reholster safely, then turn around to face up range, ready to continue the exercise. The "fire" commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

3. Stage Three: Failure to stop drill. Stage three of the advanced handgun course of fire is held at a firing range and consists of failure to stop drills fired from the ~~seven-yard~~ 7-yard line (straight draw hip holsters only).

All handguns are loaded with ~~six~~ 6 rounds of ammunition and are safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," given at approximately the ~~seven yard~~ 7-yard line, each shooter must safely turn around while acquiring a firm grip on their weapon as performed in the previous drill. Once facing the target, the students will draw and fire ~~two~~ 2 rounds at the 8-inch body circle, and then one immediate round to the 4-inch head circle. The student will then safely reholster. The drill will be repeated three times.

4. Stage Four: Multiple target identification drill. Stage four of the advanced handgun course of fire is held at a firing range and consists of multiple target identification drills fired from varying distances (straight draw hip holsters only).

Each shooter will line up on a set of three targets. Only two shooters at one time can complete this exercise on a standard 10-12 station range. However, smaller ranges may allow for only one shooter at a time.

Each handgun is loaded with six rounds of ammunition and safely holstered. The shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the targets. Upon the command "left," "right," or "center," the student must again turn around safely while establishing a firm grip on the weapon. Then, once stable, the student must quickly draw and fire 2 rounds at the designated circle on the "called" target ("L," "R," "C"). Then, the shooter, while still facing the targets, must safely reholster, turn around to face up range, and continue the exercise. Each two-round pair must be fired within ~~four~~ 4 seconds of the called command. Direction commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

5. Stage Five: Judgmental shooting. This drill combines the skills developed in the prior four stages. The shooter will be required to safely turn and fire at a "photograph" type target which may be either friendly or hostile. It requires hostile targets to be stopped using deadly force. Necessity (immediate jeopardy) is presumed for this exercise. This stage allows the instructor to evaluate the decision-making capability of the student as well as his shooting accuracy and safety.

Shooter is placed on the 10-yard line facing the instructor with the target to his rear. The target will be placed at any location along the range target line and should not be seen by the student until he is given the "turn" command during the drill. Each shooter has the opportunity to complete this drill four times. Each decision is worth one point. If he shoots at a hostile target, a hit anywhere on that target will score the point. If a friendly target is presented, it is clearly a no-shoot situation and the student should merely holster safely to score the point. There is a ~~four-second~~ 4-second time limit at this stage for any "shoot" situation.

The instructor will allow each shooter two opportunities to complete this drill and place two targets downrange for each. Four points or hits are still necessary at this stage for the total score. If two targets are used, then the time limit is raised to ~~six~~ 6 seconds, regardless of whether two hostile targets are used or one hostile with one friendly.

6VAC20-171-395. Entry-level patrol rifle training.

A. Patrol rifle classroom training. The entry-level patrol rifle classroom instruction will emphasize but not be limited to:

1. Rifle handling techniques

a. Nomenclature/identification of rifle parts

b. Field striping and reassembling

c. Loading and unloading

d. Cruiser carry conditions

e. Cruiser safe

f. Chambering

g. Reloading

h. Slings

(1) Traditional sling

(2) Single point sling

(3) 3 Point sling

i. Transition from handgun to rifle/rifle to handgun

j. Malfunctions

k. Immediate actions procedures

l. Feedway clearance procedures

m. Proper care and maintenance

n. Rifle retention

o. Ammunition management and identification

p. Range safety

q. Dim light/low light

2. Fundamentals of rifle marksmanship

a. Grip

b. Stance (position)

c. Sight alignment

d. Sight picture

e. Trigger control

f. Breathing

g. Follow through

3. Zeroing iron sights

a. Establishing mechanical zero

b. Zeroing process

4. Dim light shooting

a. Hours of darkness/dim light

b. Identification requirements

c. Unaided reduced light shooting techniques

d. Aided reduced light shooting techniques

5. Shooting positions

a. Fundamentals of shooting positions

b. Basic patrol positions

6. Use of force

7. Criminal and civil liability

8. Judgmental shooting

9. Written comprehensive examination

Total hours (excluding examination) 24 hours

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical patrol rifle training and qualification to those individuals who carry or have immediate access to a patrol rifle in the performance of their duties with the sighting system that will be carried on duty.

C. Patrol rifle qualification course.

1. All rifle qualification will be done with a law-enforcement type and caliber rifle. A total of 60 rounds of ammunition will be fired for rifle qualification.

2. All rifle qualification firing will be done with a tactical (not parade) style sling mounted on the rifle and utilized by the shooter.

3. All indoor rifle qualification firing will be done at a range that accommodates a distance of 25 yards between the shooter and the target. No variances of this distance are allowed. The indoor target system will contain two targets per shooter mounted side by side. The targets will be FBI Q-R, half-sized silhouette targets. Use of this target types will simulate shooting at 50 yards.

4. All outdoor rifle qualification firing will be done at 50 yards using the FBI Q silhouette full-sized targets. Two of these targets will be mounted side by side for each shooter.

5. FBI Q silhouette targets are used for rifle qualification, scoring will be all hits inside the bottle – value 5 points; outside the bottle – value 0 points. With these targets a maximum score of 300 points is possible. Minimum qualification is 85% or 255 points.

D. Patrol rifle course of fire.

1. All shooter are required to fire at a minimum of 30 familiarization rounds which will include transition drills from handgun to rifle and rifle to handgun.

2. Stage 1; 50 yards/25 yards (indoors) – Shooters will load their rifle with a magazine of 20 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place the selector on safe shooter will assume the prone position, the shooter will fire 10 rounds. All 20 rounds of this stage will be fired at the left hand target. (1 minute) When firing is complete shooters will place the selector on safe and await further command.

3. Stage 2; 25 yards – Shooters will load their rifle with a magazine of 15 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place the selector on safe shooter will assume the prone position, the shooter will fire 5 rounds. All 15 rounds of this stage will be fired at the right hand target. (45 seconds) When firing is complete shooters will place the selector on safe and await further command.

4. Stage 3; 15 yards - On command shooters will assume the standing position and load rifle with a magazine of 10 rounds. On command shooters will fire 5 rounds at the right-hand target, place the selector on safe, assume the kneeling position and fire 5 rounds at the left-hand target in 15 seconds.

5. Stage 4; 7 yards - On command shooters will load rifle with a magazine of 20 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 2 rounds into the right target with a 2 second time limit. Upon completion of firing shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 10 rounds expended.

6. Stage 5; 5 yards - On command shooters will load rifle with a magazine of 5 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 1 round into the left target head with a 2 second time limit. Upon completion of firing shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 5 rounds expended.

E. Low light/dim light qualification course of fire.

7 yards - Under low-light conditions, on command shooters will fire 5 rounds at the left target, place the selector in the safe position, assume the kneeling position and fire 5 rounds at the right target. A time limit of 1 minute is allowed for this stage.

6VAC20-171-400. Firearms ~~(handgun/shotgun)~~ retraining.

A. All armed private security services business personnel with the exception of personal protection specialists must satisfactorily complete ~~two~~ 4 hours of firearms classroom training or practical exercises and range training, and requalify as prescribed in ~~6VAC20-171-370~~ 6VAC20-171-376 B and C for handgun. Firearms instructors who have received prior approval from the department may substitute the alternative course specified in 6VAC20-171-370 D and the low-light course specified in 6VAC20-171-370 C for requalification firing with a semi-automatic handgun. ~~and 6VAC20-171-380 for shotgun, if applicable, on an annual basis prior to the issuance of the Firearms Endorsement, as follows:~~

~~1. Classroom retraining or practical exercises – 2 hours~~

~~2. Range qualification with handgun and/or shotgun, if applicable (no minimum hours)~~

~~Total hours (excluding range qualification) – 2 hours~~

B. Requalification training with the shotgun shall be comprised of 4 hours of classroom training or practical exercises and range training and requalification firing as specified in 6VAC20-171-380 B.

C. Requalification training with the patrol rifle shall be comprised of 4 hours of firearms classroom training or practical exercises and range training and requalification firing as specified in 6VAC20-171-395 for patrol rifle.

D. All applicable firearms retraining must be completed and documented with the department on an annual basis prior to the issuance of a firearms endorsement.

6VAC20-171-420. Advanced handgun retraining.

All armed private security services business personnel registered in the category of personal protection specialist or other armed category seeking advanced handgun designation must satisfactorily complete advanced handgun retraining, which includes eight hours of firearms classroom training and range training, and requalify as prescribed in 6VAC20-171-390 C for handgun within the 12-month period immediately preceding the expiration date of his registration as follows:

1. Legal authority and decision making ~~– 4 hours~~

2. Handgun safety, marksmanship and skill development ~~– 4 hours~~

3. Completion of advanced handgun course of fire

Total Hours (excluding range qualification) – 8 hours

~~Article 3~~
~~Security Canine Handler Training Requirements~~

6VAC20-171-430. ~~Entry level security canine handler training.~~ (Repealed.)

~~A. Prerequisites for security canine handler entry level (official documentation required):~~

~~1. Successful completion of the security officer core subjects curriculum – 18 hours; and~~

~~2. Successful completion of basic obedience training.~~

~~B. Following successful completion of the above prerequisites, each security canine handler must also comply with the following requirements:~~

~~1. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards – 2 hours~~

~~2. Evaluation by a certified private security canine handler instructor and basic obedience retraining~~

~~3. Security canine handler orientation/legal authority – 4 hours~~

~~4. Canine patrol techniques – 6 hours~~

~~5. Written examination~~

~~Total hours (excluding examinations) – 30 hours~~

6VAC20-171-440. ~~Security canine handler retraining.~~ (Repealed.)

~~Each security canine handler registrant shall comply annually with the requirement for basic obedience evaluation and retraining (Refer to 6VAC20-171-430).~~

~~1. Applicable sections of the Code of Virginia and DCJS regulations – 1 hour~~

~~2. Security canine handler basic obedience evaluation and retraining – 4 hours~~

~~3. Canine grooming, feeding, and health care – 1 hour~~

~~4. Apprehension techniques – 1 hour~~

~~5. Obedience – 1 hour~~

~~Total hours – 8 hours~~

Article ~~4~~ 3
Training Exemptions

6VAC20-171-445. Training exemptions.

Persons who meet the statutory requirements as set forth in § 9.1-141 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from the date of issuance, otherwise the partial exemption shall become null and void.

Article 2
Department Action/Sanctions

6VAC20-171-500. Disciplinary action; sanctions; publication of records.

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

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

1. Letter of reprimand or censure;

2. Probation for any period of time;

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

4. Revocation;

5. Refusal to issue, renew or reinstate a license, registration, certification or approval;

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

7. Remedial training~~.~~; or

8. Conditional agreements.

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

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

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may

publish a list of the names and addresses of all persons, licensees, firms, registrants, training schools, school directors, compliance agents and licensed firms whose conduct and activities are subject to this chapter and have been sanctioned or denied licensure, registration, certification or approval.

6VAC20-171-550. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, ~~805 East Broad Street, Richmond, Virginia 23219,~~ within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

6VAC20-171-560. Court review; appeal of final agency order.

A. The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, ~~805 East Broad Street, Richmond, Virginia 23219,~~ in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

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

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 (6VAC20-171)

Irrevocable Consent for Service Form, ~~PSS-IC (eff. 2/00).~~ PSS-IRC (eff. 5/07).

Fingerprint Processing Application, PSS-FP ~~(eff. 2/00).~~ (eff. 3/08).

Initial Compliance Agent Training and Certification, PSS-CA ~~(eff. 2/00).~~ (eff. 3/08).

Initial Business License Application, PSS-LA ~~(eff. 2/00).~~ (eff. 3/08).

Renewal Business License Application, PSS-LR ~~(eff. 2/00).~~ (eff. 3/08).

Initial Private Security Registration Application, PSS-RA ~~(eff. 2/00).~~ (eff. 3/08).

Renewal Private Security Registration Application, PSS-RR ~~(eff. 2/00).~~ (eff. 3/08).

Partial Training Exemption Application for Entry-Level Training, PSS-WA Entry ~~(eff. 2/00).~~ (eff. 3/08).

In-Service Alternative Credit Application Instructions, PSS-WA In-Service (eff. 5/07).

Training Completion Roster Application, ~~PSS-SA1 (eff. 2/00).~~ PSS-TCR (eff. 5/07).

Initial ~~Private Security~~ Instructor Certification Application - Instructions, PSS-IA ~~(eff. 2/00).~~ (eff. 1/07).

Renewal ~~Private Security~~ Instructor Application, PSS-IR ~~(eff. 2/00).~~ (eff. 5/07).

Private Security Services Complaint Form, PSS-C ~~(eff. 2/00).~~ (eff. 5/07).

Duplicate/Replacement Photo ID Application, PSS-MP2 (eff. 2/00).

General Instructor Entry–Level Training Enrollment, PSS-GE ~~(eff. 2/00).~~ (eff. 5/07).

Compliance Agent In-Service Training Enrollment, PSS-CT ~~(eff. 2/00).~~ (eff. 5/07).

Training Completion Form, PSS-TCF ~~(eff. 2/00).~~ (eff. 8/05).

~~Initial Private Security Certification Application, PSS-UA (eff. 2/00)~~.

~~Renewal Private Security Certification Application, PSS-UR (eff. 2/00)~~.

Additional Registration Category Application, ~~PSS-MP1 (eff. 2/00).~~ PSS-ARC (eff. 3/08).

Training Session Notification Form, ~~PSS-TN (eff. 2/00).~~ PSS-TSN (eff. 5/07).

Initial Training School Application, PSS-TA ~~(eff. 2/00).~~ (eff. 5/07).

Renewal Training School Application, PSS-TR ~~(eff. 2/00).~~ (eff. 5/07).

General Instructor In-Service Training Enrollment, PSS-GI ~~(eff. 2/00).~~ (eff. 5/07).

~~Personal Protection Specialist Advanced Firearms Instructor Entry Level Training Enrollment, PSS-PPSFI (eff. 2/00).~~

~~Private Security Firearms Instructor Entry Level Training Enrollment, PSS-FE (eff. 2/00).~~

Firearm Discharge Report, PSS-FR ~~(eff. 2/00).~~ (eff. 5/07).

Firearms Instructor In-Service Training Enrollment, PSS-FI ~~(eff. 2/00).~~ (eff. 5/07).

Business or Training School Address Change Form, PSS-AC2 (eff. 3/08).

Private Security Services Bond, PSS-BD (eff. 5/07).

Compliance Agent Designation/Removal Form, PSS-CD (eff. 3/08).

Additional Private Security License Category Application, PSS-LC (eff. 3/08).

Compliance Agent Certification Application and Online Training Exemption Form, PSS-WC (eff. 5/07).

Criminal History Supplemental Form, PSS-CHS (eff. 3/08).

Criminal History Waiver Application, PSS-CHW (eff. 3/08).

Locksmith Experience Verification for Entry-Level Training Waiver - No Fee, PSS-LTW (eff. 3/08).

Request for Extension Form, PSS-ER (eff. 5/07).

Individual Address Change Form, PSS-IAC (eff. 5/07).

Firearms Endorsement Application, PSS-RF (eff. 3/08).

Training School Staff Change Form, PSS-SC (eff. 4/07).

School Director Designation and Acceptance Form, PSS-SD (eff. 5/07).

Electronic Roster Submittal Authorization Application, PSS-SR (eff. 5/07).

Training School Add Category Form - No Fee, PSS-TSAC (eff.3/08).

VA.R. Doc. No. R09-1546; Filed January 13, 2010, 11:29 a.m.

STATE BOARD OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: **6VAC35-41. Regulation Governing Juvenile Group Homes and Halfway Houses (adding 6VAC35-41-10 through 6VAC35-41-1330).**

Statutory Authority: §§ 16.1-309.9, 66-10, and 66-24 of the Code of Virginia.

Public Hearing Information:

April 6, 2010 - 7 p.m. - General Assembly Building, 9th and Broad Streets, Richmond, VA

April 7, 2010 - 10 a.m. - Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: April 7, 2010.

Agency Contact: Janet P. Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Basis: Section 16.1-309.9 of the Code of Virginia requires the board to develop, promulgate, and approve standards for the operation and evaluation of facilities authorized by the Virginia Juvenile Community Crime Control Act (Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia) which includes group homes that receive funding through this Act.

Section 66-24 of the Code of Virginia establishes the board as the licensing agency for group homes or residential facilities providing care of juveniles in direct state care and requires the board to promulgate regulations for licensure or certification of these facilities. This section also requires that the regulations include (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government and group home or residential care facility imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

Additionally, the board is entrusted with general authority under § 66-10 of the Code of Virginia to promulgate such regulations as may be necessary to carry out the provisions of the laws of the Commonwealth administered by the director or the department.

Purpose: The board regulates three distinct types of facilities: (i) juvenile correctional centers; (ii) juvenile secure detention centers; and (iii) group homes and halfway houses. At present, these facilities are governed by two separate regulations: (a) the Standards for Juvenile Residential Facilities (6VAC35-140) and (b) the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

The department has had several iterations of regulations governing the residential facilities regulated by the board. Earlier, the department had five separate regulations governing secure detention homes, postdispositional confinement in secure detention, predispositional and postdispositional group homes, and juvenile correctional centers. These regulations applied to the facilities in conjunction with the Standards for the Interdepartmental Regulation of Children's Residential Facilities (CORE regulation) that went into effect in 1981.

The board's Standards for Juvenile Residential Facilities (6VAC35-140) was most recently reviewed and revised in

May 2005 and consists of the board's regulations for all facilities it regulates. This regulation establishes the minimum standards for residential facilities in the Commonwealth's juvenile justice system and covers program operations, health care, personnel, facility safety, and physical environment. It contains additional provisions for secure custody facilities, boot camps, work camps, juvenile industries, and independent living programs.

The Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) is a reenactment of the CORE regulation in its entirety. This regulation was adopted by the board in September 2008 to comply with Chapter 873 of the 2008 Acts of the General Assembly, which mandated the repeal of the CORE regulation and action to be taken by the affected boards by October 31, 2009. This regulation has more expansive provisions than 6VAC35-140 and also contains minimum requirements for the different facilities regulated by the board.

Throughout the years, problems have been identified in implementing the requirements contained in these two separate regulations given the distinct nature of the three types of facilities. Accordingly, the board has approved consolidating current regulatory requirements for residential programs and dividing them into separate regulations governing (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses. This revamping of the regulatory scheme was done in conjunction with a comprehensive review of the current provisions. This review was done with the goals of enhancing the clarity of the regulatory requirements and achieving improvements that will be reasonable and prudent, and will not impose an unnecessary burden on regulants or the public.

Having clear and concise regulations is essential to protecting the health, safety, and welfare of residents in group homes and halfway houses as well as citizens in the community. With clear expectations for the administrators managing these facilities, the facilities will be able to be operate more smoothly, which will become extremely important in this current climate of limited financial resources and will continue to allow for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

Substance: The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each type of facility regulated by the board (juvenile correctional centers, secure detention centers, and group homes and halfway houses). Each provision was reviewed as to whether it was (i) appropriate for the type of facility; (ii) clear in its intent and effect; and (iii) necessary for the proper management of the facility. Amendments were made to accommodate the specific needs of group homes and halfway houses and to enhance program and service requirements to best provide for the residents.

The following changes were made to the proposed regulation:

1. Contains only those provisions relating to group homes' and halfway houses' operation and management.

2. Removes any responsibilities of the department, regulatory authority, or the board currently included in the regulations (i.e., issuance of license or certificate and sanctions).

3. Reorganizes the order of the regulatory provisions and groups the provisions with similar provisions. The proposed regulation has sections for: (i) general provisions; (ii) administration and personnel; (iii) physical environment; (iv) safety and security; (v) residents' rights; (vi) program operation; (vii) work programs; (viii) health care services; and (ix) behavior management. Facility specific parts are included as needed (i.e., wilderness and independent living programs).

4. The following changes are proposed to the General Provisions:

a. Deletes many definitions (such as the definition of "day" and "therapy"); changes definitions to correspond with those used in other regulations; and, where appropriate, incorporates definitions into the substantive provisions of the regulation. Adds definitions for "direct care staff," "direct supervision," "regulatory authority," and "written."

b. Cross-references the board's Certification Regulation (6VAC35-20) for consistency in application of variances.

c. Allows serious incident and child protective service reports to be noted in the resident's case record and documented elsewhere. Mirrors recent changes adopted by the Department of Social Services in its residential regulation.

5. The following changes are proposed in Administration and Personnel:

a. Amends the provisions relating to community relationships. Each draft adopts different provisions specific to the type of setting and locations.

b. Amends the background checks sections to conform with the board variance issued November 2008.

c. Reworks the entire training sections. Separates out (i) orientation, (ii) required initial training, and (iii) retraining. Some different requirements are in each of the facilities.

d. Adds a requirement for staff who transport residents to report any changes in their license status. Clusters all provisions relating to volunteers together.

e. Reworks the staff and resident tuberculosis screening requirements to conform with the language of the

Division of Tuberculosis Control in the Department of Health.

f. Removes the requirement to retain face sheets permanently.

g. Amends the qualifications section to require the facility to follow the procedures of the governing authority or locality and ensure employees meet applicable job qualifications.

h. Deletes the provision requiring a procedure regarding political activity on the premises.

6. The following changes are proposed to Physical Environment:

a. Amends requirements relating to fire inspections.

b. Groups all space utilization requirements into one section and removes the current regulatory requirements to accommodate study space and all requirements relating to live-in staff.

c. Does not require the sleeping environment to be conducive to sleep and rest.

d. Deletes the space requirements for a dining area and school classrooms.

e. Removes prohibition on allowing residents to prepare food.

7. The following changes are proposed to Safety and Security:

a. Clarifies the requirements for residents and contract workers in implementing and training on the emergency/evacuation plan.

b. Reworks the searches of residents section to address facility specific issues.

c. Adds a section requiring a procedure if residents are allowed to access the Internet.

d. Prohibits weapons on the premises except by law enforcement and defines "weapon."

e. Deletes the requirement for safety rules for the use and maintenance of power equipment.

8. The following changes are proposed to Residents' Rights:

a. Changes requirement to mail visitation procedure from within 24 hours to by "the end of the next business day."

b. Adds a section titled "Contact with attorneys, courts, and law enforcement."

c. Removes the provisions regarding incontinent residents.

9. The following change is proposed to Program Operation:

Separates and reworks the sections regarding individual service plans and quarterly reports.

10. Reworks and updates the health care sections.

11. The following changes are proposed to Behavior Management:

a. Changes the requirement for all residents to have a behavior support plan to a requirement for a plan to be developed when there is a need for supports in addition to those provided for in the behavior management program.

b. Prohibits the use of chemical agents.

12. Redrafts confusing language and deletes unnecessary verbiage.

13. Makes other technical and stylistic changes, such as deleting provisions that are duplicative of other regulatory or statutory requirements (such as the restatement that the facility must comply with laws or procedures).

Issues: The Board of Juvenile Justice serves as the regulatory authority for secure residential facilities, both juvenile correctional centers and local detention centers, and the group homes and halfway houses operated by or funded through the department. Currently, these facilities are governed by two separate regulations: (i) the Standards for Juvenile Residential Facilities (6VAC35-140) and (ii) Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51), unless specifically exempted.

The current regulatory scheme has several difficulties in application. Each regulation has the full force and effect of law; unfortunately, some of the provisions are contradictory or conflict. Additionally, there are numerous exclusions for the different types of facilities from a variety of regulatory provisions. Sometimes it is unclear exactly which facilities are exempted and to which section or subsection such exceptions are applicable.

To address these issues the department considered two courses of action: (i) consolidate the two existing regulations into one or (ii) separate the two regulations into three regulations, one for each different type of facility regulated by the board.

Due to the distinct characteristics of the types of facilities regulated by the Board of Juvenile Justice and the complexity of applying a single regulation to the appropriate facility, it was concluded that it would be difficult to regulate all such facilities in one single regulation. The board approved pursuing the second course of action. Thus, the department is proposing separate regulations for the three distinct types of

facilities it regulates: (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents in group homes and halfway houses and citizens in the community. With clear expectations for the administrators running these facilities, the facilities will be able to be run more smoothly, which will become extremely important in this current climate of limited financial resources, and will continue to allow for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

This regulation poses 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 Board of Juvenile Justice (Board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation that will govern juvenile group homes and halfway houses. Most provisions in this new regulation will not vary in any substantive way from those mandated by current regulation, current Board policy, and current law. There are, however, several new requirements in the new regulation. Specifically, the Board proposes to:

• Require copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission,

• Allow greater flexibility in the timing of yearly fire inspections,

• Eliminate the requirements that staff write an initial plan that outlines a structured program of care and a daily routine within three days and a behavior support plan with 30 days of a resident's commitment,

• Allow an exception to daily shower requirements for times when there are draught conditions,

• Require facility staff to enrolled new residents in school within five days of admission,

• Require approval from a parent, placing agency and facility administrator before a resident can visit the home of a facility employee, and

• Require each facility to formulate an Internet usage policy for residents.

Result of Analysis. The benefits likely exceed the costs for all proposed changes. The costs and benefits of these changes are discussed below.

Estimated Economic Impact. Current regulations require that copies of facilities' visitation procedures to be mailed to parents of new residents within 24 hours of the resident's admission. The Board proposes to change this requirement so that facility staff have until the end of the business day following an admission to mail this information. Facility staff will benefit from having slightly more flexibility to mail out information to parents on days when mail is picked up and as it fits into staff duties.

Current regulations require group homes and halfway houses to undergo a fire inspection at least every 13 months. Since fire inspectors, rather than facility staff, conduct these inspections, this puts staff in an untenable position of guaranteeing the timing of someone else's work. The Board proposes to change the regulation so that staff must attempt to arrange a fire inspection within 13 months of the previous inspection, maintain documentation of current certification and document attempts to schedule the fire inspection should that inspection not be completed within 13 months of the last inspection. This change will benefit facility staff by only making them responsible for the actions that they can take.

Current regulations require facility staff to draft a plan that outlines a structured program of care and a daily routine for new residents within three days of their commitment. The Board proposes to replace this requirement with a provision for new residents to participate in ongoing programs upon arrival (and until release). The Board also proposes to eliminate the requirement that staff write a behavior support plan within 30 days of admission. Since all aspects of life in these facilities are already structured, and each facility has a behavior management program that is applicable to all residents, the Board believes that requiring separate written plans for each resident is duplicative and unnecessary. Staff at group homes and halfway houses are likely to benefit from this regulatory change because it allows them to eliminate a task that likely does not benefit residents.

Current regulation requires facilities to allow residents to take showers every day. The Board proposes to allow an exception to this rule if the Governor declares a state of emergency due to draught conditions or if a locality implements water restrictions. This exception will allow facility administrators to restrict showers, after consultation with local health officials, until such time as water restrictions are lifted. Any alternate shower schedule will have to account for situations where daily showers are a medical necessity. This change will benefit group homes and halfway houses, particularly those in rural areas that rely on wells that can run dry if overused during droughts, by allowing them greater flexibility in extraordinary circumstances where it would be detrimental to follow the normal rules.

Current regulations require facility staff to enroll new residents in school within five days of admission. Because this rule does not allow flexibility in situations (summer or holiday breaks) when schools may not be open, the Board proposes to only require that staff attempt to enroll new residents in school within five days. This change will benefit

facility staff by only making them responsible for the actions that they can take to ensure compliance with the law.

Current regulations require the approval of a legal guardian and placing agency before a resident can visit the home of a facility employee. The Board proposes to change this requirement so that such visits require the approval of a parent, placing agency, and the facility administrator before they can occur. This change will likely benefit all parties by ensuring that anyone who has legal responsibility for a resident knows, and approves of, his or her whereabouts.

Current regulations have no rules for Internet usage by residents of group homes and halfway houses. The Board proposes to require that each facility have rules if residents are allowed to access the Internet. This change will benefit staff at facilities as well as residents by allowing both groups to know the rules that they will be respectively enforcing and governed by.

Businesses and Entities Affected. DJJ reports that this regulation will affect the 24 locally, privately or commission operated juvenile group homes and halfway houses.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's (DPB) economic impact analysis of 6VAC35-41, Regulation Governing Juvenile Group Homes and Halfway Houses. The agency is in agreement with DPB's analysis.

Summary:

The Board of Juvenile Justice (board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation (6VAC35-41) that will govern juvenile residential facilities funded under the Virginia Juvenile Community Crime Control Act (group homes) and halfway houses operated by the Department of Juvenile Justice. Both current regulations address the requirements not only for group homes and halfway houses, but also for juvenile correctional centers and detention centers. The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each distinct type of facility. After a comprehensive review, amendments were made to accommodate the type of facility's specific needs and to enhance program and service requirements to best provide for the residents.

Most provisions in the new regulation will not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) requiring copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission; (ii) allowing greater flexibility in the timing of yearly fire inspections; (iii) eliminating the requirements that staff write an initial plan that outlines a structured program of care and a daily routine within three days and a behavior support plan within 30 days of a resident's commitment; (iv) allowing an exception to daily shower requirements for times when there are draught conditions; (v) requiring facility staff to enrolled new residents in school within five days of admission; (vi) requiring approval from a parent, placing

agency, and facility administrator before a resident can visit the home of a facility employee; and (vii) requiring each facility to formulate an Internet usage policy for residents.

CHAPTER 41
REGULATION GOVERNING JUVENILE GROUP HOMES AND HALFWAY HOUSES

Part I
General Provisions

6VAC35-41-10. Definitions.

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

"Annual" means within 13 months of the previous event or occurrence.

"Board" means Board of Juvenile Justice.

"Case record" or "record" means written or electronic information relating to one resident and the resident's family, if applicable. This information includes, but is not limited to, social, medical, psychiatric, and psychological records; reports; demographic information; agreements; all correspondence relating to care of the resident; service plans with periodic revisions; aftercare plans and discharge summary; and any other information related to the resident.

"Contraband" means any item possessed by or accessible to a resident or found within a facility or on its premises (i) that is prohibited by statute, regulation, or facility procedure, (ii) that is not acquired through approved channels or in prescribed amounts, or (iii) that may jeopardize the safety and security of the facility or individual residents.

"Department" or "DJJ" means the Department of Juvenile Justice.

"Direct care staff" means the staff whose primary job responsibilities are (i) maintaining the safety, care, and well-being of residents and (ii) implementing the structured program of care and behavior management program.

"Direct supervision" means that the staff may work with residents while not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Facility administrator" means the individual who has the responsibility for the on-site management and operation of the facility on a regular basis.

"Family oriented group home" means a private home in which residents may reside upon placement by a lawful placing agency.

"Group home" means a juvenile residential facility that is a community based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and does not exceed the capacity approved by the regulatory authority. For the purpose of this chapter, a group home includes a halfway house that houses residents in transition from a commitment to the department.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals and (ii) the objectives, strategies, and time frames for reaching the goals.

"Juvenile residential facility" or "facility" means a publicly or privately operated facility or placement where 24-hour per day care is provided to residents who are separated from their legal guardians and that is required to be licensed or certified. As used in this regulation, the term includes, but is not necessarily limited to, group homes, family-oriented group homes, and halfway houses and excludes juvenile correctional centers and juvenile detention centers.

"Living unit" means the space in which a particular group of residents in care of a juvenile residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the living unit. Depending upon its design, a building may contain one living unit or several separate living units.

"On duty" means the period of time an employee is responsible for the direct supervision of one or more residents.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of an individual, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom the individual regularly resides; (iii) a person judicially appointed as a legal guardian; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Placement" means an activity by any person that provides assistance to a placing agency, parent, or legal guardian in locating and effecting the movement of a resident to a juvenile residential facility.

"Placing agency" means (i) any person, group, court, court service unit, or agency licensed or authorized by law to place residents in a juvenile residential facility or (ii) a local board of social services authorized to place residents in a juvenile residential facility.

"Premises" means the tracts of land on which any part of a facility is located and any buildings on such tracts of land.

"Provider" means the person, corporation, partnership, association, locality, commission, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the regulatory and statutory requirements relating to the facility.

"Regulatory authority" means the board or the department as designated by the board.

"Resident" means an individual who is legally placed in, formally placed in, or admitted to a juvenile residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Shelter care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

6VAC35-41-20. Applicability.

This chapter applies to group homes, halfway houses, shelter care, and other applicable juvenile residential facilities regulated by the board as authorized by statute. Parts I (6VAC35-41-10 et seq.) through VI (6VAC35-41-710 et seq.), XII (6VAC35-41-1150 et seq.), and XIII (6VAC35-41-1290 et seq.) of this chapter apply to all juvenile residential facilities, with the exception of family-oriented group homes, governed by this regulation unless specifically excluded. Parts VII (6VAC35-41-950) through XI (6VAC35-41-1120 et seq.) of this chapter apply only to the specific programs or facilities as indicated.

6VAC35-41-30. Previous regulations terminated.

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140) for the regulation of all juvenile residential facilities as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for juvenile detention facilities and juvenile correctional centers, regulated by the board, until such time as the board adopts new regulations related thereto.

6VAC35-41-40. Certification.

A. The provider shall comply with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20). The provider shall:

1. Demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations;

2. Implement approved plans of action to correct findings of noncompliance are being implemented; and

3. Ensure no noncompliance may pose an immediate and direct danger to residents.

B. The provider shall maintain the documentation necessary to demonstrate compliance with this chapter for a minimum of three years.

C. The current certificate shall be posted at all times in each facility in a place conspicuous to the public.

6VAC35-41-50. Age of residents.

A. Facilities shall admit residents only in compliance with the age limitations approved by the board in establishing the facility's certification capacity, except as provided in subsection B of this section.

B. A facility shall not admit a resident who is above the age approved for licensure. A child may remain in the facility above the age of licensed capacity (i) to allow the resident to complete a program identified in the resident's individual service plan and (ii) if a discharge plan has been established. This subsection does not apply to shelter care programs.

6VAC35-41-60. Relationship to the regulatory authority.

A. All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.

B. A written report of any contemplated changes in operation that would affect the terms of the license or certificate or the continuing eligibility for licensure or certification shall be submitted to the regulatory authority. A change may not be implemented prior to approval by the regulatory authority.

6VAC35-41-70. Relationship with the department.

A. The director or designee shall be notified within five working days of any significant change in administrative structure or newly hired facility administrator.

B. Any of the following that may be related to the health safety or human rights of residents shall be self-reported to the director or designee within 10 days: (i) lawsuits against the facility or its governing authority and (ii) settlements with the facility or its governing authority.

6VAC35-41-80. Variances.

A. Board action may be requested by the facility administrator to relieve a facility from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. Any such variance may not be implemented prior to approval of the board.

6VAC35-41-90. Serious incident reports.

A. The following events shall be reported within 24 hours to: (i) to the placing agency, (ii) to the parent or legal guardian, or both, as applicable and appropriate, and (iii) the director or designee:

1. Any serious incident, accident, illness, or injury to the resident;

2. The death of a resident;

3. Any overnight absence from the facility without permission;

4. Any runaway;

5. Any fire, hostage or emergency situation, or natural disaster that jeopardizes the health, safety, and welfare of the residents; and

6. Any suspected case of child abuse or neglect at the facility, on a facility event or excursion, or involving facility center staff as provided in 6VAC35-41-100 (suspected child abuse or neglect).

The 24 hour reporting requirement may be extended when the emergency situation or natural disaster has made such communication impossible (e.g., modes of communication are not functioning). In such cases, notice shall be provided as soon as feasible thereafter.

B. The provider shall notify the director or designee within 24 hours of any events detailed in subsection A of this section and all other situations required by the regulatory authority of which the facility has been notified.

C. The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or designee. The report shall contain the following information:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name or identifying information of the person who made the report to the placing agency and to either the parent or legal guardian, as appropriate and applicable; and

6. The name of or identifying information provided by the person to whom the report was made, including any law enforcement or child protective service personnel.

D. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

E. In addition to the requirements of this section, any serious incident involving an allegation of child abuse or neglect at the facility, at a facility sponsored event, or involving facility staff shall be governed by 6VAC35-41-100 (suspected child abuse or neglect).

6VAC35-41-100. Suspected child abuse or neglect.

A. When there is a reason to suspect that a child is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with the written procedures.

B. Written procedures shall be distributed to all staff members and shall at a minimum provide for the following:

1. Handling accusations against staff;

2. Reporting and documenting suspected cases of child abuse and neglect; and

3. Cooperating during any investigation.

C. Any case of suspected child abuse or neglect shall be reported and documented as required in 6VAC35-41-90 (serious incident reports). The resident's record shall contain a written reference that a report was made.

6VAC35-41-110. Grievance procedure.

A. Written procedure shall provide that residents are oriented to and have continuing access to a grievance procedure that provides for:

1. Resident participation in the grievance process with assistance from staff upon request;

2. Investigation of the grievance by an objective employee who is not the subject of the grievance;

3. Documented, timely responses to all grievances with the reasons for the decision;

4. At least one level of appeal;

5. Administrative review of grievances;

6. Protection from retaliation or threat of retaliation for filing a grievance; and

7. Hearing of an emergency grievance within eight hours.

B. Each resident shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language and (ii) posted in an area easily accessible to residents and their parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

Part II
Administrative and Personnel

Article 1
General Provisions

6VAC35-41-120. Responsibilities of the provider or governing authority.

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the holder of the certificate (governing authority). Any change in the identity or corporate status of the governing authority or provider shall be reported to the director or designee.

B. The governing authority shall appoint a facility administrator to whom it delegates the authority and responsibility for administrative direction of the facility.

C. A written decision-making plan shall be developed and implemented and shall provide for a staff person with the qualifications of a facility administrator to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

D. The provider shall have a written statement of its (i) purpose, (ii) population served, and (iii) available services for each facility subject to this regulation.

E. Written procedures shall be developed and implemented to monitor and evaluate quality assurance in each facility. Improvements shall be implemented when indicated.

6VAC35-41-130. Insurance.

A. Documentation of the following insurance coverage shall be maintained:

1. Liability insurance covering the premises and the facility's operations, including all employees and volunteers, if applicable.

2. Insurance necessary to comply with Virginia's minimum insurance requirements for all vehicles used to transport residents.

B. Staff who use personal vehicles for official business, including transporting residents, shall be informed of the requirements to provide and document insurance coverage for such purposes.

6VAC35-41-140. Participation of residents in human research.

A. The provider shall have procedures approved by its governing authority to govern the review, approval, and monitoring of human research. Human research means any systematic investigation, including research development, testing, and evaluating, involving human subjects, including but not limited to a resident or his parents, guardians, or family members, that is designed to develop or contribute to generalized knowledge. Human research does not include statistical analysis of information readily available on the subject that does not contain any identifying information or research exempted by federal research regulations pursuant to 45 CFR 46.101(b).

B. Information on residents shall be maintained as provided in 6VAC35-41-330 (maintenance of residents' records) and all records and information related to the human research shall be kept confidential in accordance with applicable laws and regulations.

C. The provider may require periodic progress reports of any research project and a formal final report of all completed research projects.

Article 2
Hiring

6VAC35-41-150. Job descriptions.

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title or position;

2. Duties and responsibilities of the incumbent;

3. Job title or identification of the immediate supervisor; and

4. Minimum education, experience, knowledge, skills, and abilities required for entry level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position prior to assuming that position's duties.

6VAC35-41-160. Qualifications.

A. Facilities subject to (i) the rules and regulations of a governing authority or (ii) the rules and regulations of a local government personnel office shall develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority. Facilities not subject to rules and regulations of the governing authority or a local government personnel office shall follow the minimum entry-level qualifications of the Virginia Department of Human Resource Management.

B. When services or consultations are obtained on a contractual basis, they shall be provided by professionally qualified personnel.

C. Each facility shall provide documentation of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission, required by 6VAC35-41-730 B (application for admission).

6VAC35-41-170. Physical examination.

When the qualifications for a position require a given set of physical abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

6VAC35-41-180. Employee and volunteer background checks.

A. Except as provided in subsection C of this section, all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of his duties in a juvenile residential facility shall undergo the following background checks in accordance with § 63.2-1726 of the Code of Virginia to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the facility:

1. A reference check;

2. A criminal history check;

3. A fingerprint check with the Virginia State Police and Federal Bureau of Investigations (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed, until such time as all background checks are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-41-310 (personnel records).

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of subsection A of this section and who have contact with residents.

Article 3
Employee Orientation and Training

6VAC35-41-190. Required initial orientation.

A. Before the expiration of the employee's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the program;

4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures in accordance with 6VAC35-41-490 (emergency and evacuation procedures);

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform in his positions.

B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:

1. The facility's program philosophy and services;

2. The facility's behavior management program;

3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;

4. The residents' rules of conduct and responsibilities;

5. The residents' disciplinary and grievance procedures;

6. Child abuse and neglect and mandatory reporting;

7. Standard precautions; and

8. Documentation requirements as applicable to his duties.

C. Volunteers shall be oriented in accordance with 6VAC35-41-300 (orientation and training for volunteers or interns).

6VAC35-41-200. Required initial training.

A. Each full-time and part-time employee and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the jobs.

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

2. Contractors shall receive training required to perform their position responsibilities in a juvenile residential facility.

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers employed by contract to provide behavioral health or health care services, shall complete training in the following areas:

1. Emergency preparedness and response;

2. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;

3. The facility's behavior management program;

4. The residents' rules of conduct and the rationale for the rules;

5. The facility's behavior intervention procedures, with physical and mechanical restraint training required as applicable to their duties;

6. Child abuse and neglect;

7. Mandatory reporting;

8. Maintaining appropriate professional relationships;

9. Interaction among staff and residents;

10. Suicide prevention;

11. Residents' rights;

12. Standard precautions; and

13. Procedures applicable to the employees' position and consistent with their work profiles.

C. Employees who administer medication shall have, prior to such administration, successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.

D. Training shall be required by and provided as appropriate to the individual's job duties and in accordance with the provider's training plan.

E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

F. Volunteers and interns shall be trained in accordance 6VAC35-41-300 (orientation and training for volunteers or interns).

6VAC35-41-210. Required retraining.

A. Each employee, relief staff, and contractor shall complete retraining that is specific to the individual's occupational class and the position's job description and addresses any professional development needs.

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers who are employed by contract to provide behavioral health or health care services, shall complete at least 40 hours of training annually that shall include training in the following areas:

1. Suicide prevention;

2. Child abuse and neglect;

3. Mandatory reporting;

4. Standard precautions; and

5. Behavior intervention procedures.

D. Staff required by their position to have certification in cardiopulmonary resuscitation and first aid shall receive training sufficient to maintain current certifications.

E. Employees who administer medication shall complete an annual refresher training on the administration of medication.

F. Retraining shall (i) be required by and provided as appropriate to the individual's job duties, (ii) address any needs identified by the individual and the supervisor, if applicable, and (iii) be in accordance with the provider's training plan.

G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

H. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

Article 4
Personnel

6VAC35-41-220. Written personnel procedures.

The provider shall have and implement provider approved written personnel procedures and make these readily accessible to each staff member.

6VAC35-41-230. Code of ethics.

A written code of ethics shall be available to all employees.

6VAC35-41-240. Reporting criminal activity.

A. Staff shall be required to report all known criminal activity by residents or staff to the facility administrator for appropriate action.

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department as appropriate and applicable, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.

C. The facility shall assist and cooperate with the investigation of any such complaints and allegations as necessary.

6VAC35-41-250. Notification of change in driver's license status.

Staff whose job responsibilities may involve transporting residents shall (i) maintain a valid driver's license and (ii) report to the facility administrator or designee any change in their driver's license status including but not limited to suspensions, restrictions, and revocations.

6VAC35-41-260. Physical or mental health of personnel.

When an individual poses a direct threat to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the direct care or direct supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the direct care or direct supervision of residents. The results of any medical information or documentation of any disability related inquiries shall be maintained separately from the employee's personnel records maintained in accordance with 6VAC35-41-310 (personnel records). For the purpose of this section a direct threat means a significant risk of substantial harm.

Article 5
Volunteers

6VAC35-41-270. Definition of volunteers or interns.

For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.

6VAC35-41-280. Selection and duties of volunteers or interns.

A. Any facility that uses volunteers or interns shall develop and implement written procedures governing their selection and use. Such procedures shall provide for the objective evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns shall neither be responsible for the duties of direct care staff nor for the direct supervision of the residents.

6VAC35-41-290. Background checks for volunteers or interns.

A. Any individual who (i) volunteers on a regular basis or is an intern and (ii) will be alone with a resident in the performance of that position’s duties shall be subject to the background check requirements provided for in 6VAC35-41-180 A (employee and volunteer background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each intern and each volunteer for whom a background investigation is required. Such records shall be kept in accordance with 6VAC35-41-310 (personnel records).

C. A facility that uses volunteers shall have procedures for supervising volunteers, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

6VAC35-41-300. Orientation and training for volunteers or interns.

A. Volunteers and interns shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the facility;

4. The facility's organizational structure;

5. Security, population control, emergency, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

1. Any procedures that are applicable to their duties and responsibilities; and

2. Their duties and responsibilities in the event of a facility evacuation.

Article 6
Employee Records

6VAC35-41-310. Personnel records.

A. Separate up-to-date written or automated personnel records shall be maintained on each (i) employee and (ii) volunteer or intern on whom a background check is required.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;

2. Educational background and employment history;

3. Written references or notations of oral references;

4. Annual performance evaluations;

5. Date of employment for each position held and date of separation;

6. Documentation of compliance with requirements of Virginia law regarding child protective services and criminal history background investigations;

7. Documentation of the verification of any educational requirements and of professional certification or licensure if required by the position;

8. Documentation of all training required by this chapter and any other training received by individual staff; and

9. A current job description.

C. If applicable, health records, including reports of any required health examinations, shall be maintained separately from the other records required by this section.

D. The personnel records of volunteers and contractual service providers may be limited to documentation of compliance with the background checks as required by 6VAC35-41-180 (employee and volunteer background checks).

6VAC35-41-320. Employee tuberculosis screening and follow-up.

A. On or before the employee's start date at the facility each employee shall submit evidence of freedom from tuberculosis in a communicable form that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; or

2. The employee develops chronic respiratory symptoms of three weeks duration.

D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Disease, Policy 99-001, Virginia Department of Health's Division of Tuberculosis Prevention and Control.

Article 7
Residents' Records

6VAC35-41-330. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident that shall include all correspondence and documents received by the facility relating to the care of that resident and documentation of all case management services provided.

B. A separate health record may be kept on each resident. The resident's active health records shall be readily accessible in case of emergency and shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each case record and health record shall be kept (i) up to date, (ii) in a uniform manner, and (ii) confidential from unauthorized access.

D. Written procedures shall provide for the management of all records, written and automated, and shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquisition of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures that include:

a. How records are protected from unauthorized access;

b. How records are protected from unauthorized Internet access;

c. How records are protected from loss;

d. How records are protected from unauthorized alteration; and

e. How records are backed up.

3. Security measures to protect records (i) from loss, unauthorized alteration, inadvertent or unauthorized access, or disclosure of information; and (ii) during transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

E. Written procedure shall specify what information is available to the resident.

F. Active and closed written records shall be kept in secure locations or compartments that are accessible to authorized staff and shall be protected from unauthorized access, fire, and flood.

G. All case records shall be retained as governed by The Library of Virginia.

6VAC35-41-340. Face sheet.

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, gender, race, unique numerical identifier, and admission date;

2. Names, addresses, and telephone numbers of the resident's placing agency, emergency contacts, legal guardians, and parents, as applicable and appropriate; and

B. Upon discharge, the date of and reason for discharge, names and addresses of persons to whom the resident was discharged, and forwarding address of the resident, if known, shall be recorded on the face sheet.

C. Information shall be updated when changes occur.

Part III
Physical Environment

6VAC35-41-350. Buildings and inspections.

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the facility's buildings and equipment, documentation of the facility's request to schedule the annual inspection as well as documentation of any necessary follow-up with fire prevention authorities shall be maintained.

C. The facility shall maintain a current copy of its annual inspection and approval, in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;

2. Sewage disposal system;

3. Water supply;

4. Food service operations; and

5. Swimming pools, if applicable.

6VAC35-41-360. Equipment and systems inspections and maintenance.

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the facility administrator. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, corrective action shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

6VAC35-41-370. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents such that a temperature no less than 68°F is

maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

6VAC35-41-380. Lighting.

A. Sleeping and activity areas in the facility shall provide natural lighting.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. There shall be night lighting sufficient to observe residents.

D. Each facility shall have a plan for providing alternative lighting in case of emergencies.

E. Outside entrances and parking areas shall be lighted.

6VAC35-41-390. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F to 120°F.

6VAC35-41-400. Toilet facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathtub or bathtub alternative in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities certified or licensed before July 1, 1981.

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981. Facilities licensed or certified after December 28, 2007, shall comply with the one-to-four ratio.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located.

G. When bathrooms are not designated for individual use:

1. Each toilet shall be enclosed for privacy, and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains, or other appropriate means.

H. Windows in bathrooms and dressing areas shall provide for privacy.

6VAC35-41-410. Sleeping areas.

A. Males and females shall have separate sleeping areas.

B. No more than four residents shall share a bedroom or sleeping area.

C. Beds shall be at least three feet apart at the head, foot, and sides; and double-decker beds shall be at least five feet apart at the head, foot, and sides.

D. Sleeping quarters in facilities established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

E. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

F. Each resident shall be assigned drawer space and closet space, or their equivalent, that is accessible to the sleeping area for storage of clothing and personal belongings.

G. Windows in sleeping areas and dressing areas shall provide for privacy.

H. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency.

6VAC35-41-420. Furnishings.

All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

6VAC35-41-430. Disposal of garbage and management of hazardous materials.

A. Provision shall be made for the collection and legal disposal of all garbage and waste materials.

B. All flammable, toxic, and caustic materials within the facility shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

6VAC35-41-440. Smoking prohibitions.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

6VAC35-41-450. Space utilization.

A. Each facility shall provide for the following:

1. A living room;

2. An indoor recreation area with appropriate recreation materials;

3. An outdoor recreation area;

4. A dining area, where meals are served, that is equipped with tables and benches or chairs;

5. A visitation area that permits informal communication between residents and visitors, including the opportunity for physical contact in accordance with written procedures;

6. Kitchen facilities and equipment for the preparation and service of meals with any walk-in refrigerators or freezers equipped to permit emergency exits;

7. Space and equipment for laundry equipment if laundry is done at the facility;

8. Space for the storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials; and

9. Space for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

B. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purposes.

6VAC35-41-460. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes, but is not limited to, (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin.

6VAC35-41-470. Animals on the premises.

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

Part IV
Safety and Security

6VAC35-41-480. Fire prevention plan.

Each facility shall develop a fire prevention plan that provides for an adequate fire protection service.

6VAC35-41-490. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for each facility. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of employees, contractors, interns, volunteers, visitors and residents; property protection; community outreach; and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, interns, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying parents and legal guardians, as applicable and appropriate;

g. Alerting emergency personnel and sounding alarms;

h. Locating and shutting off utilities when necessary; and

i. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. Contractors and volunteers and interns shall be oriented in their responsibilities in implementing the emergency preparedness plan in the event of an emergency.

D. The provider shall review and document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, interns, and volunteers and incorporated into training for employees, contractors, interns, and volunteers and orientation of residents to services.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider shall take appropriate action to protect the health, safety, and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider shall report the disaster or emergency in accordance with 6VAC35-41-90 (serious incident reports).

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can be seen easily by staff and residents.

H. The responsibilities of the residents in implementing the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in accessing resident emergency information.

K. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including:

a. Head count, and

b. Practice in notifying emergency authorities; and

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

L. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-41-500. Contraband.

Written procedure shall provide for the control, detection, and disposition of contraband.

6VAC35-41-510. Searches of residents.

A. Each facility that conducts searches shall have procedures that provide that all searches shall be subject to the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.

2. Searches are conducted only by personnel who are authorized to conduct such searches.

3. The resident shall not be touched any more than is necessary to conduct the search.

B. Facilities that do not conduct searches of residents shall have a procedure prohibiting them.

C. Strip searches and visual inspections of the vagina and anal cavity areas shall only be permitted (i) if ordered by a court; (ii) if conducted by law-enforcement personnel acting in his official capacity; or (iii) if the facility obtains the approval of the regulatory authority to conduct such searches. A facility that conducts such searches shall have a procedure that provides that the searches shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;

2. The search shall be conducted in an area that ensures privacy; and

3. Any witness to the search shall be of the same gender as the resident.

D. Manual and instrumental searches of the anal cavity or vagina shall be prohibited unless court ordered.

6VAC35-41-520. Telephone access and emergency numbers.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

C. An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

6VAC35-41-530. Internet access.

Facilities that allow resident access to the Internet shall have procedures governing such usage.

6VAC35-41-540. Weapons.

A. The possession, use, and storage of weapons in facilities or on the premises where residents are reasonably expected to have access are prohibited except when specifically authorized by statutes or regulations or provided in subsection B of this section. For the purpose of this section, weapons shall include (i) any pistol, revolver, or other weapon intended to propel a missile of any kind by action of an explosion; (ii) any dirk, bowie knife, except a pocket knife having a folding metal blade of less than three inches, switchblade knife, ballistic knife, machete, straight razor, slingshot, spring stick, metal knucks, or blackjack; (iii) nunchucks or other flailing instrument with two or more rigid parts that swing freely; and (iv) throwing star or oriental dart.

B. Weapons shall be permitted if they are in the possession of a licensed security personnel or law-enforcement officer while in the course of his duties.

6VAC35-41-550. Transportation.

A. It shall be the responsibility of the facility to have transportation available or to make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and, if applicable, for the use and maintenance of vehicles.

C. The facility shall have a procedure for the verification of appropriate licensure for staff whose duties involve transporting residents.

Part V
Residents' Rights

6VAC35-41-560. Prohibited actions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Denial of contacts and visits with the resident's attorney, a probation officer, the department, regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;

3. Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Any action that is humiliating, degrading, or abusive;

5. Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;

6. Subjection to unsanitary living conditions;

7. Denial of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

8. Denial of health care;

9. Deprivation of appropriate services and treatment;

10. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual, but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident;

11. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

12. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. Involuntary placement of a resident alone in a locked room or a secured area where the resident is prevented from leaving;

14. Use of mechanical restraints (e.g., handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, or a restraint chair);

15. Involuntary use of pharmacological restraints (administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition);

16. Discrimination on the basis of race, religion, national origin, sex, or physical disability; and

17. Other constitutionally prohibited actions.

6VAC35-41-570. Residents' mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section or as permitted by other applicable regulations or by order of a court.

B. In accordance with written procedures, staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate facility interests of order and security, nonlegal mail may be read, censored, or rejected. In accordance with written procedures, the resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. Legal mail shall mean any written material that is sent to or received from a designated class of correspondents, as defined in procedures, which shall include any court, legal counsel, administrators of the grievance system, or administrators of the department, facility, provider, or governing authority.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public official, or grievance administrators unless permission has been obtained from a court or the facility administrator has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized, staff may read such mail only in the presence of a witness and in accordance with written procedures.

E. Except as otherwise provided in this section, incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays.

F. Cash, stamps, and other specified items may be held for the resident.

G. Upon request, each resident shall be given postage and writing materials for all legal correspondence and at least two other letters per week.

H. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

I. First class letters and packages received for residents who have been transferred or released shall be forwarded.

J. Written procedure governing correspondence of residents shall be made available to all staff and residents and shall be reviewed annually and updated as needed.

6VAC35-41-580. Telephone calls.

Residents shall be permitted reasonable access to a telephone in accordance with procedures that take into account the need for facility security and order, resident behavior, and program objectives.

6VAC35-41-590. Visitation.

A. Residents shall be permitted to reasonable visiting privileges, consistent with written procedures, that take into account (i) the need for security and order, (ii) the behavior of individual residents and visitors, (iii) the importance of helping the resident maintain strong family and community ties, (iv) the welfare of the resident; and (v) whenever possible, flexible visiting hours.

B. Copies of the written visitation procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when

parents or legal guardians do not participate in the admission process, visitation procedures shall be mailed, either electronically or via first class mail, to them by the close of the next business day after admission, unless a copy has already been provided to the individual.

6VAC35-41-600. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as provided for in 6VAC35-41-570 (residents' mail), by telephone, or in person. For the purpose of this section a legal representative is defined as a court appointed or retained attorney or a paralegal, investigator, or other representative from that attorney's office.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. Residents' consent shall be obtained prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

3. Each facility shall have procedures for establishing a resident's consent to any such contact and for documenting the resident's decision. The procedures may provide for (i) notification of the parent or legal guardian, as appropriate and applicable, prior to the commencement of questioning; and (ii) opportunity, at the resident's request, to confer with an attorney, parent or guardian, or other person in making the decision whether to consent to questioning.

6VAC35-41-610. Personal necessities and hygiene.

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. Size appropriate clothing and shoes for indoor or outdoor wear;

3. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

4. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens and table linens.

E. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

6VAC35-41-620. Showers.

Residents shall have the opportunity to shower daily, except when a declaration of a state of emergency due to drought conditions has been issued by the Governor or water restrictions have been issued by the locality. Under these exceptional circumstances showers shall be restricted as determined by the facility administrator after consultation with local health officials. The alternate schedule implemented under these exceptional circumstances shall account for cases of medical necessity related to health concerns and shall be in effect only until such time as the water restrictions are lifted.

6VAC35-41-630. Clothing.

A. Provision shall be made for each resident to have an adequate supply of clean and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by individuals of the same age in the community who are engaged in similar activities.

C. Residents shall have the opportunity to participate in the selection of their clothing.

D. Residents shall be allowed to take personal clothing when leaving the facility.

6VAC35-41-640. Residents' privacy.

Residents shall be provided privacy while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

6VAC35-41-650. Nutrition.

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Special diets or alternative dietary schedules, as applicable, shall be provided in the following circumstances: (i) when prescribed by a physician or (ii) when necessary to observe the established religious dietary practices of the resident. In such circumstances, the meals shall meet the minimum nutritional requirements of the U.S. Dietary Guidelines.

C. Menus of actual meals served shall be kept on file for at least six months.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the facility administrator approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Providers shall assure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

6VAC35-41-660. School enrollment and study time.

A. The facility shall make all reasonable efforts to enroll each resident of compulsory school attendance age in an appropriate educational program within five school business days after admission and in accordance with § 22.1-254 of the Code of Virginia and Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice (8VAC20-660), if applicable. Documentation of the enrollment and any attempt to enroll the resident shall be maintained in the resident's record.

B. Each provider shall develop and implement written procedures to ensure that each resident has adequate study time.

6VAC35-41-670. Religion.

A. Residents shall not be required or coerced to participate in or be unreasonably denied participation in religious activities.

B. The provider's procedures on religious participation shall be available to residents and any individual or agency considering placement of an individual in the facility.

6VAC35-41-680. Recreation.

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities, both structured and unstructured;

2. Use of available community recreational resources and facilities;

3. Scheduling of activities so that they do not conflict with meals, religious services, educational programs, or other regular events; and

4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water related activities will be provided, including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility, the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen and evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

6VAC35-41-690. Residents' funds.

A. The provider shall implement written procedures for safekeeping and for recordkeeping of any money that belongs or is provided to residents, including allowances, if applicable.

B. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit, for payments ordered by a court, or to pay restitution for damaged property or personal injury as determined by disciplinary procedures.

6VAC35-41-700. Fundraising.

The provider shall not use residents in its fundraising activities without the written permission of the legal guardian and the consent of residents.

Part VI
Program Operation

Article 1
Admission, Transfer, and Discharge

6VAC35-41-710. Placement pursuant to a court order.

When a resident is placed in a facility pursuant to a court order, the following requirements shall be met by maintaining a copy of a court order in the resident's case record:

1. 6VAC35-41-730 (application for admission).

2. 6VAC35-41-740 (admission procedures).

3. 6VAC35-41-750 (written placement agreement).

4. 6VAC35-41-780 (emergency admissions).

5. 6VAC35-41-810 (discharge procedures).

6VAC35-41-720. Readmission to a shelter care program.

A. When a resident is readmitted to a shelter care facility within 30 days from discharge, the following requirements shall not apply:

1. 6VAC35-41-730 (application for admission).

2. 6VAC35-41-740 (admission procedures).

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall:

1. Review and update all information on the face sheet as provided in 6VAC35-41-340 (face sheet);

2. Complete a health screening in accordance with 6VAC35-41-1200 (health screening at admission);

3. Complete required admission and orientation process as provided in 6VAC35-41-760 (admission); and

4. Update in the case record any other information regarding the resident that has changed since discharge.

6VAC35-41-730. Application for admission.

A. Except for placements pursuant to a court order or resulting from a transfer between residential facilities located in Virginia and operated by the same governing authority, all admissions shall be based on evaluation of an application for admission.

B. Providers shall develop and fully complete prior to acceptance for care an application for admission that is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;

2. The mental health, emotional, and psychological needs of the prospective resident;

3. The physical health needs, including the immunization needs, of the prospective resident;

4. The protection needs of the prospective resident;

5. The suitability of the prospective resident' admission;

6. The behavior support needs of the prospective resident; and

7. Information necessary to develop a service plan and a behavior support plan.

C. Each facility shall develop and implement written procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;

2. The facility's staff are trained to meet the prospective resident’s needs; and

3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

6VAC35-41-740. Admission procedures.

A. Except for placements pursuant to a court order, the facility shall admit only those residents who are determined to be compatible with the services provided through the facility.

B. The facility's written criteria for admission shall include the following:

1. A description of the population to be served;

2. A description of the types of services offered;

3. Intake and admission procedures;

4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and

5. Description of how educational services will be provided to the population being served.

6VAC35-41-750. Written placement agreement.

A. Except for placements pursuant to a court order or when a resident admits himself to a shelter care facility, each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency. Routine admission means the admittance of a resident following evaluation of an application for admission and execution of a written placement agreement.

B. The written placement agreements shall:

1. Authorize the resident's placement;

2. Address acquisition of and consent for any medical treatment needed by the resident;

3. Address the rights and responsibilities of each party involved;

4. Address financial responsibility for the placement;

5. Address visitation with the resident; and

6. Address the education plan for the resident and the responsibilities of all parties.

6VAC35-41-760. Admission.

A. Written procedure governing the admission and orientation of residents to the facility shall provide for:

1. Verification of legal authority for placement;

2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;

3. Health screening;

4. Notification of parents and legal guardians, as applicable and appropriate, including of (i) admission, (ii) visitation, and (iii) general information, including how the resident's parent or legal guardian may request information and register concerns and complaints with the facility;

5. Interview with resident to answer questions and obtain information;

6. Explanation to resident of program services and schedules; and

7. Assignment of resident to a housing unit or room.

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall update the information required in subsection A of this section.

6VAC35-41-770. Orientation to facility rules and disciplinary procedures.

A. During the orientation to the facility, residents shall be given written information describing facility rules, the sanctions for rule violations, and the facility's disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists that can lead to a resident misunderstanding the facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident.

6VAC35-41-780. Emergency admissions.

Providers accepting emergency admissions, which are the unplanned or unexpected admission of a resident in need of immediate care excluding self-admittance to a shelter care facility or a court ordered placement, shall:

1. Develop and implement written procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court;

2. Place in each resident's record the order of a court, a written request for care or documentation of an oral request for care, and justification of why the resident is to be admitted on an emergency basis; and

3. Except placements pursuant to court orders, clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

6VAC35-41-790. Resident transfer between residential facilities located in Virginia and operated by the same governing authority.

A. Except for transfers pursuant to a court order, when a resident is transferred from one to another facility operated by the same provider or governing authority the sending facility shall provide the receiving facility, at the time of transfer, a written summary of (i) the resident's progress while at the facility; (ii) the justification for the transfer; (iii) the resident's current strengths and needs; and (iv) any medical needs, medications, and restrictions and, if necessary, instructions for meeting these needs.

B. Except for transfers pursuant to a court order, when a resident is transferred from one to another facility operated by the same provider or governing authority the receiving facility shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities, and criteria for admission;

2. Notification to the family, if appropriate; the resident, the placement agency, and the legal guardian; and

3. Receipt of the written summary from the sending facility required by subsection A of this section.

6VAC35-41-800. Placement of residents outside the facility.

A resident shall not be placed outside the facility prior to the facility obtaining a placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

6VAC35-41-810. Discharge procedures.

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;

2. Conditions under which a resident may be discharged before completing the program; and

3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. Residents shall be discharged only to the legal guardian, legally authorized representative, or foster parent with the written authorization of a representative of the legal guardian. A resident over the age of 17 or who has been emancipated may assume responsibility for his own discharge.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

6VAC35-41-820. Discharge documentation.

A. Except for residents discharged pursuant to a court order, the case record shall contain the following:

1. Documentation that discharge planning occurred prior to the planned discharge date;

2. Documentation that discussions with the parent or legal guardian, placing agency, and resident regarding discharge planning occurred prior to the planned discharge date;

3. A written discharge plan developed prior to the planned discharge date; and

4. As soon as possible, but no later than 30 days after discharge, a comprehensive discharge summary placed in the resident's record and sent to the placing agency. The discharge summary shall review the following:

a. Services provided to the resident;

b. The resident's progress toward meeting service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. Reasons for discharge and names of persons to whom resident was discharged;

e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

B. When a resident is discharged pursuant to a court order, the case record shall contain a copy of the court order.

Article 2
Programs and Services

6VAC35-41-830. Operational procedures.

Current operational procedures shall be accessible to all staff.

6VAC35-41-840. Structured programming.

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision;

3. Ensure the delivery of program services; and

4. Meet the objectives of any individual service plan.

B. Each facility shall have goals, objectives, and strategies consistent with the facility's mission and program objectives utilized when working with all residents until the residents' individualized service plans are developed. These goals, objectives, and strategies shall be provided to the residents in writing during orientation to the facility.

C. Residents shall be allowed to participate in the facility's programs, as applicable, upon admission.

6VAC35-41-850. Daily log.

A. A daily communication log shall be, in accordance with facility procedures, maintained to inform staff of significant happenings or problems experienced by residents.

B. The date and time of the entry and the identity of the individual making each entry shall be recorded.

C. If the facility records log book-type information on a computer, all entries shall post the date, time, and identity of the person making an entry. The computer shall prevent previous entries from being overwritten.

6VAC35-41-860. Individual service plan.

A. An individual service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. The initial individual service plan shall be distributed to the resident; the resident's family, legal guardian, or legally authorized

representative; the placing agency; and appropriate facility staff.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives, and strategies established for the resident including a behavior support plan, if appropriate;

4. Projected family involvement;

5. Projected date for accomplishing each objective; and

6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. Each service plan shall include the date it was developed and the signature of the person who developed it.

D. The service plan shall be reviewed within 60 days of the development of the plan and within each 90-day period thereafter. The individual service plan shall be revised as necessary. Any changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

E. The resident and facility staff shall participate in the development of the individual service plan.

F. The (i) supervising agency and (ii) resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

G. Copies of the individual service plan shall be provided to the (i) resident; (ii) parents or legal guardians, as appropriate and applicable, and (iii) the placing agency.

6VAC35-41-870. Quarterly reports.

A. Except when a resident is placed in a shelter care program, the resident's progress toward meeting his individual service plan goals shall be reviewed and a progress report shall be prepared within 60 days of the development of the plan and within each 90-day period thereafter and shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of the person who developed it.

C. All quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff.

6VAC35-41-880. Therapy.

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist unless exempted from these requirements under the Code of Virginia.

6VAC35-41-890. Community relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community.

B. In addition to the requirements of 6VAC35-41-290 (background checks for volunteers or interns), written procedures shall govern how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written procedures for promoting positive relationships with the neighbors that shall be approved by the department.

6VAC35-41-900. Resident visitation at the homes of staff.

Resident visitation at the homes of staff is prohibited unless written permission from the (i) resident's parent or legal guardian, as applicable and appropriate, (ii) the facility administrator, and (iii) the placing agency is obtained before the visitation occurs. The written permission shall be kept in the resident's record.

Article 3
Supervision

6VAC35-41-910. Additional assignments of direct care staff.

If direct care staff assume nondirect care responsibilities, such responsibilities shall not interfere with the staff's direct care duties.

6VAC35-41-920. Staff supervision of residents.

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty and responsible for the direct care of residents more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, a rest day shall mean a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the operation of the facility.

C. Direct care staff shall have an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

E. There shall be at least one trained direct care worker on duty and actively supervising residents at all times that one or more residents are present.

F. Whenever residents are being supervised by staff there shall be at least one staff person present with a current basic certification in standard first aid and a current certificate in cardiopulmonary resuscitation issued by a recognized authority.

G. The provider shall develop and implement written procedures that address staff supervision of residents including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These procedures shall be based on the:

1. Needs of the population served;

2. Types of services offered;

3. Qualifications of staff on duty; and

4. Number of residents served.

6VAC35-41-930. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility sponsored activities, except that independent living programs shall have at least one direct care staff member awake, on duty, and responsible for supervision of every 15 residents on the premises or participating in off-campus, facility sponsored activities.

B. During the hours that residents are scheduled to sleep there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. This requirement does not apply to approved independent living programs.

D. On each floor where residents are sleeping, there shall be at least one direct care staff member awake and on duty for every 30 residents or portion thereof.

6VAC35-41-940. Outside personnel working in the facility.

A. Facility staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents in the facility.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Part VII
Work Programs

6VAC35-41-950. Work and employment.

A. Assignment of chores that are paid or unpaid work assignments shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the facility administrator with the knowledge and consent of the legal guardian.

D. In both work assignments and employment the facility administrator shall evaluate the appropriateness of the work and the fairness of the pay.

Part VIII
Independent Living Programs

6VAC35-41-960. Independent living programs.

A. Independent living programs shall be a competency based program, specifically approved by the board to provide the opportunity for the residents to develop the skills necessary to become independent decision makers, to become self-sufficient adults, and to live successfully on their own following completion of the program.

B. Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, hygiene, nutrition, and other life skills.

6VAC35-41-970. Independent living programs curriculum and assessment.

A. Each independent living program must demonstrate that a structured program using materials and curriculum approved by the board is being used to teach independent living skills. The curriculum must include information regarding each of the areas listed in subsection B of this section.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department. The assessment must cover the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health and sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning and career planning;

9. Job seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills and social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in 6VAC35-41-860 (individual service plan), goals, objectives, and strategies addressing each of the areas listed in subsection B of this section, as applicable.

6VAC35-41-980. Employee training in independent living programs.

Each independent living program shall develop and implement procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the training shall be kept in the employee's staff record.

6VAC35-41-990. Medication management in independent living programs.

If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written procedures that include:

1. Training for the resident in self administration and recognition of side effects;

2. Method for storage and safekeeping of medication;

3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and

4. Method for documenting the administration of medication.

6VAC35-41-1000. Nutrition procedure in independent living programs.

Each independent living program shall develop and implement written procedures that ensure that each resident is receiving adequate nutrition as required in 6VAC35-41-650 A, B, and C (nutrition).

Part IX
Wilderness Programs and Adventure Activities

6VAC35-41-1010. Wilderness program.

A. The provider must obtain approval by the board prior to operating a primitive camping program.

B. Any wilderness program must meet the following conditions: (i) maintain a nonpunitive environment; (ii) have an experience curricula; (iii) accept residents only nine years of age or older who cannot presently function at home, in school, or in the community.

C. Any wilderness work program or wilderness work camp program shall have a written program description covering:

1. Its intended resident population;

2. How work assignments, education, vocational training, and treatment will be interrelated;

3. The length of the program;

4. The type and duration of treatment and supervision to be provided upon release or discharge; and

5. The program's behavioral expectations, incentives, and sanctions.

6VAC35-41-1020. Wilderness programs or adventure activities.

A. All wilderness programs and providers that take residents on wilderness or adventure activities shall develop and implement procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff to resident ratio and supervision plan appropriate for each activity, including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness or adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall be trained in a wilderness first aid course.

6VAC35-41-1030. Initial physical for wilderness programs or adventure activities.

Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

6VAC35-41-1040. Physical environment of wilderness programs or adventure activities.

A. Each resident shall have adequate personal storage area.

B. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

C. Artificial lighting shall be provided in a safe manner.

D. All areas of the campsite shall be lighted for safety when occupied by residents.

E. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

F. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

6VAC35-41-1050. Sleeping areas of wilderness programs or adventure activities.

A. In lieu of or in addition to dormitories, cabins, or barracks for housing residents, primitive campsites may be used.

B. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

C. A separate bed, bunk, or cot shall be made available for each person.

D. A mattress cover shall be provided for each mattress.

E. Bedding shall be clean, dry, sanitary, and in good repair.

F. Bedding shall be adequate to ensure protection and comfort in cold weather.

G. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

H. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

I. Staff of the same sex may share a sleeping area with the residents.

6VAC35-41-1060. Personal necessities in wilderness programs or adventure activities.

A. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

B. Sturdy, water resistant, outdoor footwear shall be provided for each resident.

6VAC35-41-1070. Trip or activity coordination for wilderness programs or adventure activities.

A. All wilderness programs and facilities that take residents on wilderness or adventure activities must designate one staff

person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity to take place during the trip.

4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity to take place during the trip.

B. The trip coordinator shall conduct a post trip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

C. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures are updated to reflect improvements needed.

D. A trip folder will be developed for each wilderness or adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

E. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

F. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

Part X
Family Oriented Group Homes

6VAC35-41-1080. Requirements of family oriented group home systems.

Family oriented group home systems shall have written procedures for:

1. Setting the number of residents to be housed in each home and room of the home and prohibiting individuals less than 18 years of age and individuals older than 17 years of age from sharing sleeping rooms without specific approval from the facility administrator;

2. Providing supervision of and guidance for the family oriented group home parents and relief staff;

3. Admitting and orienting residents;

4. Preparing a treatment plan for each resident within 30 days of admission or 72 hours in the case of a shelter care facility, and reviewing the plan quarterly;

5. Providing appropriate programs and services from intake through release;

6. Providing residents with spending money;

7. Managing resident records and releasing information;

8. Providing medical and dental care to residents;

9. Notifying parents and guardians, as appropriate and applicable, the placing agency, and the department of any serious incident as specified in written procedures;

10. Making a program supervisor or designated staff person available to residents and house parents 24 hours a day; and

11. Ensuring the secure control of any firearms and ammunition in the home.

6VAC35-41-1090. Examination by physician.

Each resident admitted to a family oriented group home shall have a physical examination including tuberculosis screening within 30 days of admission unless the resident was examined within six months prior to admission to the program.

6VAC35-41-1100. Requirements of family group homes.

Each family oriented group home shall have:

1. A fire extinguisher, inspected annually;

2. Smoke alarm devices in working condition;

3. Alternative methods of escape from second story;

4. Modern sanitation facilities;

5. Freedom from physical hazards;

6. A written emergency plan that is communicated to all new residents at orientation;

7. An up-to-date listing of medical and other emergency resources in the community;

8. A separate bed for each resident, with clean sheets and linens weekly;

9. A bedroom that is well illuminated and ventilated; is in reasonably good repair; is not a hallway, unfinished basement or attic; and provides conditions for privacy;

10. A place to store residents' clothing and personal items;

11. Sanitary toilet and bath facilities that are adequate for the number of residents;

12. A safe and clean place for indoor and outdoor recreation;

13. Adequate furniture;

14. Adequate laundry facilities or laundry services;

15. A clean and pleasant dining area;

16. Adequate and nutritionally balanced meals; and

17. Daily provision of clean clothing and articles necessary for maintaining proper personal hygiene.

6VAC35-41-1110. Other applicable regulations.

Each family oriented group home shall also be subject to and comply with the requirements of the following provisions of this chapter:

1. 6VAC35-41-180 (employee and volunteer background checks);

2. 6VAC35-41-190 (required initial orientation);

3. 6VAC35-41-200 (required initial training); and

4. 6VAC35-41-210 (required retraining).

Part XI
Respite Care

6VAC35-41-1120. Definition of respite care.

Respite care facility shall mean a facility that is specifically approved to provide short-term, periodic residential care to residents accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

6VAC35-41-1130. Admission and discharge from respite care.

A. Acceptance of an individual as eligible for respite care by a respite care facility is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

B. A respite care facility shall discharge a resident when the legal guardian no longer intends to use the facility's services.

6VAC35-41-1140. Updating health records in respite care.

Respite care facilities shall update the information required by 6VAC35-41-1170 B (health care procedures) at the time of each stay at the facility.

Part XII
Health Care Services

6VAC35-41-1150. Definitions applicable to health care services.

"Health authority" means the individual, government authority, or health care contractor responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, consistent with applicable statutes and regulations, prevailing community standards, and medical ethics.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering heath care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.

6VAC35-41-1160. Provision of health care services.

Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other health-trained personnel shall provide care within their level of training and certification.

6VAC35-41-1170. Health care procedures.

A. The provider shall have and implement written procedures for promptly:

1. Arranging for the provision of medical and dental services for health problems identified at admission;

2. Arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Arranging for emergency medical and mental health care services, as appropriate and applicable, for each resident as provided by statute or by the agreement with the resident's legal guardian;

4. Arranging for emergency medical and mental health care services, as appropriate and applicable, for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use;

d. Significant past and present medical problems; and

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

6VAC35-41-1180. Health-trained personnel.

A. Health-trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health-trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-41-1190. Consent to and refusal of health care services.

A. The knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free choice (informed consent) to health care shall be obtained from the resident, parent, guardian, or legal custodian as required by law.

B. The resident, parent, guardian, or legal custodian, as applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure and (ii) the alternatives to it.

C. Residents may refuse in writing medical treatment and care. This subsection does not apply to medication refusals that are governed by 6VAC35-41-1280 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-41-1200. Health screening at admission.

The facility shall require that:

1. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or health-trained staff, using a health screening form that has been approved by the facility's health authority. As necessary to maintain confidentiality, all or a portion of the interview shall be conducted with the resident without the presence of the parent or guardian.

2. Residents admitted to the facility who pose a health or safety threat to themselves or others are not admitted to the facility's general population but provision shall be made for them to receive comparable services.

3. Immediate health care is provided to residents who need it.

6VAC35-41-1210. Tuberculosis screening.

A. Within seven days of placement each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall comply with guidelines and recommendations of (Screening for TB Infection and Disease, Policy TB 99-001) the Virginia

Department of Health, Division of Tuberculosis Prevention and Control for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

6VAC35-41-1220. Medical examinations and treatment.

A. Except for residents placed in a shelter care facility, each resident accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the report of an examination within the preceding 12 months shall be acceptable if a resident transfers from one facility licensed or certified by a state agency to another and (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available.

B. Each resident shall have an annual physical examination by or under the direction of a licensed physician and an annual dental examination by a licensed dentist.

6VAC35-41-1230. Infectious or communicable diseases.

A. A resident with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to shelter care facilities.

B. The facility shall implement written procedures approved by a medical professional that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter; and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

6VAC35-41-1240. Suicide prevention.

Written procedure shall provide (i) for a suicide prevention and intervention program, developed in consultation with a qualified medical or mental health professional, and (ii) for all direct care staff to be trained in the implementation of the program.

6VAC35-41-1250. Residents' health records.

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

B. The resident's active health records (i) shall be kept confidential and inaccessible from unauthorized persons, (ii) shall be readily accessible in case of emergency, and (iii) shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

D. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to shelter care facilities and respite care facilities.

E. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

F. Each resident's health record shall include or document the facility's efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

6VAC35-41-1260. First aid kits.

A. A well stocked first aid kit shall be maintained and readily accessible for dealing with minor injuries and medical emergencies.

B. First aid kits should be monitored in accordance with established facility procedures to ensure kits are maintained, stocked, and ready for use.

6VAC35-41-1270. Hospitalization and other outside medical treatment of residents.

A. When a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely; and

2. A parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission.

B. If a parent or legal guardian does not accompany the resident to the hospital or other medical treatment outside the facility, the parent or legal guardian shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

6VAC35-41-1280. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, unless otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication. All staff who administer medication shall complete an annual refresher medication training.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. For the purpose of this section a medical incident means an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to an incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a health care professional. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals that shall address:

1. Manner by which medication refusals are documented, and

2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

Part XIII
Behavior Support and Management

6VAC35-41-1290. Behavior management.

A. Each facility shall implement a behavior management program. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, and residents' and employees' safety and security.

B. Written procedures governing this program shall provide the following:

1. A listing of the rules of conduct and behavioral expectations for the resident;

2. Orientation of residents as provided in 6VAC35-41-770 (orientation to facility rules and disciplinary procedures);

3. The definition and listing of a system of privileges and sanctions that is used and available for use. Sanctions shall be listed in the order of their relative degree of restrictiveness and shall contain alternative to room confinement as a sanction.

4. Specification of the staff members who may authorize the use of each privilege and sanction;

5. Documentation requirements when privileges are applied and sanctions are imposed; and

6. Specification of the processes for implementing such procedures.

C. Written information concerning the procedures of the provider's behavior management program shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission.

D. When substantive revisions are made to procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and

2. Legal guardians and placing agencies prior to implementation.

E. The facility administrator or designee shall review the behavior management program and procedures at least annually to determine appropriateness for the population served.

F. Any time residents are present, staff must be present who have completed all trainings in behavior management.

6VAC35-41-1300. Behavior support.

A. Each facility shall have a procedure regarding behavior support plans for use with residents who need supports in addition to those provided in the facility's behavior management program that addresses the circumstances under which such plans shall be utilized. Such plans shall support the resident's self-management of his own behavior and shall include:

1. Identification of positive and problem behavior;

2. Identification of triggers for behaviors;

3. Identification of successful intervention strategies for problem behavior;

4. Techniques for managing anger and anxiety; and

5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;

2. Legal guardian, if applicable;

3. Resident's parents, if applicable;

4. Program director;

5. Placing agency staff; and

6. Other applicable individuals.

C. Prior to working alone with an assigned resident, each staff member shall review and be prepared to implement the resident's behavior support plan.

6VAC35-41-1310. Timeout.

A. A facility may use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (time-out) under the following conditions:

1. The provider shall develop and implement written procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout.

2. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

3. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it.

4. A resident in timeout shall be able to communicate with staff.

5. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

B. Use of timeout and staff checks on the residents shall be documented.

6VAC35-41-1320. Physical restraint.

A. Physical restraint shall be used as a last resort only after less restrictive interventions have failed or to control residents whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force deemed reasonable to be necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with the intent to inflict injury.

2. Staff may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.

3. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Written procedures governing use of physical restraint shall include:

1. The staff position who will write the report and timeframe;

2. The staff position who will review the report and timeframe; and

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

C. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

D. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;

2. Staff involved;

3. Justification for the restraint;

4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;

5. Duration;

6. Description of method or methods of physical restraint techniques used;

7. Signature of the person completing the report and date; and

8. Reviewer's signature and date.

6VAC35-41-1330. Chemical agents.

Staff are prohibited from using pepper spray and other chemical agents to manage resident behavior.

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 (6VAC35-41)

Health Services Intake Medical Screening, HS 1/10.

TB Risk Assessment Form, TB 512-Form (rev. 2/05), Virginia Department of Health Division of TB Control.

Instructions for the TB Risk Assessment Form, TB 512-Instructions (rev. 2/05), Virginia Department of Health Division of TB Control.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-41)

Screening for TB Infection and Disease, Policy TB 99-001 (www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Policies/screening.htm), Virginia Department of Health.

A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.

VA.R. Doc. No. R09-1817; Filed January 11, 2010, 2:27 p.m.

Proposed Regulation

Title of Regulation: **6VAC35-71. Regulation Governing Juvenile Correctional Centers (adding 6VAC35-71-10 through 6VAC35-71-1270).**

Statutory Authority: §§ 66-10 and 66-13 of the Code of Virginia.

Public Hearing Information:

April 6, 2010 - 7 p.m. - General Assembly Building, 9th and Broad Streets, Richmond, VA

April 7, 2010 - 10 a.m. - Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, Second Floor Conference Room, Richmond, VA

Public Comment Deadline: April 7, 2010.

Agency Contact: Janet P. Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Basis: Section 66-13 of the Code of Virginia provides the department with the authority to "receive juveniles committed to it by the courts of the Commonwealth" and to "establish, staff and maintain facilities for the rehabilitation, training and confinement of such juveniles."

The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which states the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

This regulation also contains provisions governing privately operated juvenile correctional centers and boot camps. These are mandated by Chapter 2.1 (§ 66-25.3 et seq.) of Title 66 (Juvenile Corrections Private Management Act) and § 66-13 of the Code of Virginia, respectively.

Purpose: The Board of Juvenile Justice regulates three distinct types of facilities: (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses. At present, these facilities are regulated by the board and are governed by two separate regulations: (a) the Standards for Juvenile Residential Facilities (6VAC35-140) and (b) the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

The department has had several iterations of regulations governing the residential facilities regulated by the board. Earlier, the department had five separate regulations governing secure detention homes, postdispositional confinement in secure detention, predispositional and postdispositional group homes, and juvenile correctional centers. These regulations applied to the facilities in conjunction with the Standards for the Interdepartmental Regulation of Children's Residential Facilities (CORE regulation), which went into effect in 1981.

The board's Standards for Juvenile Residential Facilities (6VAC35-140) was most recently reviewed and revised in May 2005 and consists of the board's regulations for all facilities it regulates. This regulation establishes the minimum standards for residential facilities in the Commonwealth's juvenile justice system and covers program operations, health care, personnel, facility safety, and physical environment. It contains additional provisions for secure custody facilities, boot camps, work camps, juvenile industries, and independent living programs.

The Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) is a reenactment of the CORE regulation in its entirety as a board regulation. This regulation was adopted by the board in September 2008 in order to comply with the requirements of Chapter 873 of the 2008 Acts of the General Assembly, which mandated the repeal of the CORE regulation and action to be taken by the affected boards by October 31, 2009. This regulation has more expansive provisions than 6VAC35-140 and also contains minimum requirements for the different facilities regulated by the board.

Throughout the years, problems have been identified in implementing the requirements contained in these two separate regulations, given the distinct nature of the three types of facilities regulated by the board. Accordingly, the board has approved consolidating the current regulatory requirements for residential programs and separating them into separate regulations governing (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses. This revamping of the regulatory scheme was done in conjunction with a comprehensive review of the current provisions. This review was done with the goals of enhancing the clarity of the regulatory requirements and achieving improvements that are reasonable and prudent, and will not impose an unnecessary burden on its regulants or the public.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents in juvenile correctional centers and citizens in the community. With clear expectations for the administrators running these facilities, the facilities will be able to be run more smoothly and utilize any extra resources for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

Substance: The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each type of facility regulated by the board (juvenile correctional centers, secure detention centers, and group homes and halfway houses). Each provision was reviewed as to whether it (i) was appropriate for the type of facility; (ii) was clear in its intent and effect; and (iii) was necessary for the proper management of the facility. Amendments were made to accommodate the juvenile correctional centers' specific needs and to enhance program and service requirements to best provide for the residents.

The following changes from the current regulatory scheme (6VAC35-140 and 6VAC35-51) are proposed:

1. Contains only those provisions relating to juvenile correction center (JCC) operation and management.

2. Removes any responsibilities of the department, regulatory authority, or the board currently included in the regulations (i.e., issuance of license or certificate and sanctions).

3. Reorganizes the order of the regulatory provisions and groups the provisions with similar provisions. The proposed regulation has sections for: (i) general provisions; (ii) administration and personnel; (iii) physical environment; (iv) safety and security; (v) residents' rights; (vi) program operation; (vii) work programs; (viii) health care services; and (ix) behavior management. Facility specific parts are included as needed (i.e., privately operated JCCs and boot camps).

4. The following changes are proposed to the General Provisions:

a. Deletes many definitions (such as the definition of "day" and "therapy"); changes definitions to correspond with those used in other regulations; and, where appropriate, incorporates definitions into the substantive provisions of the regulation. Adds definitions for "direct care," "direct supervision," "regulatory authority," and "written."

b. Cross-references the board's certification regulation (6VAC35-20) for consistency in application of variances.

c. Allows serious incident and child protective services reports to be noted in the resident's case record and documented elsewhere. Mirrors recent changes adopted by the Department of Social Services in its residential regulation.

d. Removes the requirement for posting the certification and grievance procedure in an area accessible to the public.

e. Adds a resident advisory committee section requiring each JCC, except the Reception and Diagnostic Center (RDC), to have a resident advisory committee that meets monthly with the superintendent or designee to discuss facility issues affecting the residents.

5. The following changes are proposed in Administration and Personnel:

a. Amends the provisions relating to community relationships and adopts provisions specific to the type of setting and locations.

b. Amends the background check sections to conform with the board variance issued November 2008.

c. Reworks the training sections. Separates out (i) orientation; (ii) required initial training; and (iii) retraining.

d. Adds a requirement for staff who transport residents to report any changes in their license status.

e. Clusters all provisions relating to volunteers together.

f. Reworks the staff and resident tuberculosis screening requirements to conform with the language of the Division of Tuberculosis Control in the Department of Health.

g. Removes the requirement to retain face sheets permanently.

h. Changes the requirements for administrative staff visiting the activity and living areas.

i. Requires all direct care staff to be certified in first aid and CPR and to keep these certifications current.

j. Deletes sections relating to personnel records and human resources issues as these are governed by the Department of Human Resources Management and department personnel procedures.

k. Deletes the provision requiring a procedure regarding political activity on the premises.

6. The following changes are proposed to Physical Environment:

a. Amends requirements relating to fire inspections.

b. Groups all space utilization requirements into one section and removes the current regulatory requirements to accommodate study space and all requirements relating to live-in staff.

c. Deletes the prohibition of having more than four residents in a sleeping area; does not require the sleeping environment to be conducive to sleep and rest.

d. Adds a hazardous chemicals section requiring a hazard communication plan.

e. Adopts board policy language regarding the facility's smoking prohibitions.

f. Requires food service operation maintenance and pest control plans.

g. Removes the prohibition on allowing residents to prepare food.

7. The following changes are proposed to Safety and Security:

a. Clarifies the requirements for residents and contract workers in implementing and training on the emergency/evacuation plan.

b. Reworks the searches of residents section to address facility-specific issues.

c. Defers to written procedures regarding weapons on the premises.

8. The following changes are proposed to Residents' Rights:

a. Changes requirement to mail visitation procedure from within 24 hours to by the end of "the next business day."

b. Adds a section titled "Contact with attorneys, courts, and law enforcement."

c. Removes the provisions regarding incontinent residents.

d. Removes the requirements for the facility to have a witness present when mail is examined by staff, to hold cash and stamps for the residents, and to review the procedures annually. Retains the requirement for the facility to provide two stamps per week and to allow correspondence with attorney and courts.

e. Allows exception to the daily shower requirement for the management of maladaptive behaviors.

f. Allows exception to the privacy provision when mental health issues require constant supervision.

g. Allows exception to the diet schedule to manage maladaptive behaviors or for institutional security.

9. The following changes are proposed to Program Operation:

a. Separates and reworks the sections regarding individual service plans and quarterly reports.

b. Adds language regarding the applicability and components of the classification plan.

c. In the communication with parents section, adds a requirement for each JCC to provide parents with the contact information for an individual at the facility to which inquiries may be addressed and, if the parent requests, to be invited to any scheduled staffing or treatment team meetings.

d. Redefines "rest day" as the period during which the employee is scheduled off versus actually off.

10. The following changes are proposed to Health Care Services:

a. Requires direct care staff to be trained in certain health procedures (derived from board policy 12-001.21).

b. Requires a dental examination upon admission to a JCC (derived from board policy 12-003).

c. Requires a resident's immunizations record to be updated, except when the resident qualifies for an exemption under state law (derived from board policy 12-003).

d. Requires health screenings when a resident is transferred between JCCs (derived from board policy 12-003).

e. Requires procedures for sick call and timely responding to medical issues (derived from board policy 12-004).

f. Requires emergency health care services at JCCs (derived from board policy 12-007).

g. Requires the resident to have a physical 30 days prior to release (derived from board policy 12-003).

11. The following changes are proposed to Behavior Management:

a. Changes the requirement for all residents to have a behavior support plan to a requirement for a behavior support contract to be developed when there is a need for supports in addition to those provided for in the behavior management program.

b. Prohibits the use of chemical agents.

c. Reworks all provisions relating to room confinement, isolation, and administrative segregation.

d. Streamlines the process for monitoring residents in mechanical restraints.

12. Redrafts confusing language and deletes unnecessary verbiage.

13. Makes other technical and stylistic changes, such as deleting provisions that are duplicative of other regulatory or statutory requirements (e.g., the restatement that the facility must comply with laws or procedures).

Issues: The Board of Juvenile Justice serves as the regulatory authority for secure residential facilities, both juvenile correctional centers and local detention centers, and the group homes and halfway houses operated by or funded through the department. Currently, these facilities are governed by two separate regulations: (i) the Standards for Juvenile Residential Facilities (6VAC35-140) and (ii) the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51), unless specifically exempted.

The current regulatory scheme has several difficulties in application. Each regulation has the full force and effect of law. Unfortunately, some of the provisions are contradictory or conflict. Additionally, there are numerous exclusions for the different types of facilities from a variety of regulatory provisions. Sometimes it is unclear exactly which facilities are exempted and to which section or subsection such exceptions are applicable.

To address these issues the department considered two courses of action: (i) consolidate the two existing regulations into one or (ii) separate the two regulations into three regulations, one for each different type of facility regulated by the board.

Due to the distinct characteristics of the types of facilities regulated by the Board of Juvenile Justice and the complexity

of applying a single regulation to the appropriate facility, it was concluded that it would be difficult to regulate all such facilities in one single regulation. The board approved pursuing the second course of action. Thus, the department is proposing separate regulations for the three distinct types of facilities it regulates: (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents in juvenile correctional centers and citizens in the community. With clear expectations for the administrators managing these facilities, the facilities will be able to be operate more smoothly and utilize any extra resources for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

This regulation poses 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 Board of Juvenile Justice (Board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation that will govern Juvenile Correctional Centers (JCC). Most provisions in this new regulation will not vary in any substantive way from those mandated by current regulation, current Board policy, and current law. There are, however, several new requirements in the new regulation. Specifically, the Board proposes to:

• Require each JCC to have a community liaison and allow each facility to form a community advisory committee,

• Require all direct care staff to maintain current certification in CPR and first aid,

• No longer require newly constructed facilities to have separate bathrooms from those that are available for residents to use,

• Change requirements for resident sleeping areas to take into account older facilities that do not have a physical room configuration that allows them to comply with current regulations,

• Require copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission,

• Allow the requirement for residents to shower daily to be modified if necessary to maintain security of the facility so long as the modification is approved by the JCC superintendent or a mental health provider,

• Institute an exception to the rule that requires staff to give residents privacy bathing, dressing or using the bathroom so that suicidal residents can be supervised at all times,

• Allow exceptions to normal meal rules, so long as the substitute meals meet nutritional requirements, on the advice of a mental health provider or at the order of the superintendent of the facility if needed to maintain facility security, and

• Require facilities to provide two hot meals a day.

Result of Analysis. The benefits likely exceed the costs for most proposed changes. There is insufficient information to determine if benefits outweigh costs for one of these proposed changes. The costs and benefits of these changes are discussed below.

Estimated Economic Impact. Current regulations require all JCCs to have a community advisory committee which includes individuals from the communities where the JCCs are located. At some JCCs, however, no community members are interested in joining the required committee. Because of this, the Board proposes to only require JCCs to have a community liaison and allow the JCCs to choose whether to form a community advisory committee. This change will benefit JCCs by allowing them to meet their regulatory responsibility to communicate with the larger community without requiring them to form a committee that the larger may or may not want to participate in. This change is unlikely to add costs to any affected entity.

Currently, all JCC staff that will work directly with residents must complete CPR and first aid training as part of their initial training. Current regulations do not require direct care staff to recertify in CPR/first aid once their initial certification has lapsed but JCC policy does. The Board proposes to move this policy into regulation. JCCs have CPR/first aid instructors on staff and recertification is required every two years. To the extent that first aid/CPR skills may be necessary in the jobs of these staff, requiring maintenance of that certification is likely also beneficial.

Current facility requirements for juvenile correctional centers require that there be a separate bathroom facilities (from those open to residents) for staff. Current regulations also require that no more than four residents sleep in one room and that beds be placed at least three feet apart. The Board proposes to remove the requirement for separate staff bathrooms. The Board also proposes to remove the requirement that there be no more than four residents per bedroom because the Board now allows dormitory sleeping areas in facilities. The Board proposes to specify that the requirement that beds be at least three feet apart only applies to facilities built after July 1981 because facilities built before then have concrete barriers in the sleeping areas that make it impossible to safely place beds that far apart. The Department of Juvenile Justice (DJJ) will benefit from these regulatory changes as they allow greater flexibility in building new facilities where space is used more efficiently and also allows older facilities to safely house residents without running afoul of regulatory requirements.

Current regulations require that copies of facilities' visitation procedures to be mailed to parents of new residents within 24 hours of the resident's admission. The Board proposes to change this requirement so that facility staff have until the end of the business day following an admission to mail this information. Facility staff will benefit from having slightly more flexibility to mail out information to parents on days when mail is picked up and as it fits into staff duties.

Current regulations require facilities to give all residents the opportunity to shower daily. The Board proposes to allow showers to be restricted as necessary to maintain the security of the JCC. This action will only be allowed with the approval of the superintendent of the facility in question or, for individual residents, on the advice of their mental health provider. This change will benefit facility staff as it will allow them to get permission to temporarily suspend daily showers if permitting them would adversely impact facility safety. This change will also provide a benefit for residents who, for instance, may be suicidal; with the advice of that resident's mental health provider, staff will be able to temporarily suspend shower privileges rather than having to choose between violating a resident's privacy rights or allowing the resident to shower alone when that might allow the resident the opportunity to harm themselves.

Current regulations require that residents be given privacy from sight supervision by staff of the opposite sex when they are bathing, dressing or using bathroom facilities. The Board proposes to allow an exception to this rule if constant supervision is needed because of a mental health condition. This change will benefit facility staff who currently cannot both follow the current regulatory requirement and ensure the safety of residents who wish to harm themselves. Suicidal residents may temporarily lose their right to privacy on account of this change but this cost is likely outweighed by the benefit of increased safety for these individuals.

Current regulations require that facilities provide three daily meals, one of which must be hot, that provide for all the nutritional requirements of a healthy diet. Exceptions to meal rules are currently allowed to meet religious restrictions and on the order of a medical doctor.

The Board proposes to extend the exceptions to the meal rules to include those recommended for a resident by his or her mental health provider and those necessary to ensure the safety of the facility and its residents. Any replacement meals that are offered in lieu of normal meals must provide the same nutrition. This change will allow facility staff greater flexibility to meet the nutritional needs of the residents while still keeping them safe.

The Board also proposes to change the regulation to reflect current practice, which has JCCs serving two hot meals a day rather than one. Preparation of hot meals is likely to cost more than offering cold meals (such as cereal and fruit for breakfast or sandwiches for lunch) but it is unlikely that these additional meals would be more nutritious. While there may be some benefit for residents who enjoy hot meals more than they do cold ones, it is unclear whether that benefit would outweigh the additional costs that facilities will incur.

Businesses and Entities Affected. DJJ reports that this regulation will affect the seven state-operated juvenile correctional centers.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's economic impact analysis of 6VAC35-71, Regulation Governing Juvenile Correctional Centers. The agency is in agreement with DPB's analysis.

Summary:

The Board of Juvenile Justice (board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into a new regulation (6VAC35-71) that will govern juvenile correctional centers. Most provisions in the new regulation will not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) requiring each juvenile correctional center to have a community liaison and allow each facility to form a community advisory committee; (ii) requiring all direct care staff to maintain current certification in CPR and first aid; (iii) no longer requiring newly constructed facilities to have separate bathrooms from those that are available for residents to use; (iv) changing requirements for resident sleeping areas to take into account older facilities that do not have a physical room configuration that allows them to comply with current regulations; (v) requiring copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission; (vi) allowing the requirement for residents to shower daily to be modified if necessary to maintain security of the facility so long as the modification is approved by the superintendent of the facility or a mental health provider; (vii) instituting an exception to the rule the requires staff to give residents privacy bathing, dressing or using the bathroom so that suicidal residents can be supervised at all times; (viii) allowing exceptions to normal meal rules, so long as the substitute meals meet nutritional requirements, on the advice of a mental health provider or at the order of the superintendent of the facility if needed to maintain facility security; and (ix) requiring facilities to provide two hot meals a day.

CHAPTER 71
REGULATION GOVERNING JUVENILE CORRECTIONAL CENTERS

Part I
General Provisions

6VAC35-71-10. Definitions.

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

"Annual" means within 13 months of the previous event or occurrence.

"Board" means Board of Juvenile Justice.

"Case record" or "record" means written or electronic information regarding a resident and the resident's family, if applicable, maintained in accordance with written procedures.

"Contraband" means any item possessed by or accessible to a resident or found within a juvenile correctional center or on its premises that (i) is prohibited by statute, regulation, or department procedure; (ii) is not acquired through approved channels or in prescribed amounts; or (iii) may jeopardize the safety and security of the juvenile correctional center or individual residents.

"Department" means the Department of Juvenile Justice.

"Direct care" means the time during which a resident who is committed to the department pursuant to § 16.1-272 or 16.1-285.1, or subsection A 14 or 17 of § 16.1-278.8 of the Code of Virginia is under the supervision of staff in a juvenile correctional center operated by or under contract with the department.

"Direct care staff" means the staff whose primary job responsibilities are for (i) maintaining the safety, care, and well-being of residents; (ii) implementing the structured program of care and the behavior management program; and (iii) maintaining the security of the facility.

"Direct supervision" means the act of working with residents who are not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals, to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

"Juvenile correctional center," "JCC," or "facility" means a public or private facility, operated by or under contract with the Department of Juvenile Justice, where 24-hour per day

care is provided to residents under the direct care of the department.

"Living unit" means the space in a juvenile correctional center in which a particular group of residents reside that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one living unit or several separate living units.

"On duty" means the period of time, during an employee's scheduled work hours, during which the employee is responsible for the direct supervision of one or more residents in performance of that employee's position's duties.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Premises" means the tracts of land on which any part of a juvenile correctional center is located and any buildings on such tracts of land.

"Reception and Diagnostic Center" or "RDC" means the juvenile correctional center that serves as the central intake facility for all individuals committed to the department. The Reception and Diagnostic Center's primary function is to orient, evaluate, and classify each resident before being assigned to a juvenile correctional center or alternative placement.

"Regulatory authority" means the board or the department if designated by the board.

"Resident" means an individual, either a minor or an adult, who is committed to the department and resides in a juvenile correctional center.

"Rules of conduct" means a listing of a juvenile correctional center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Superintendent" means the individual who has the responsibility for the on-site management and operation of a juvenile correctional center on a regular basis.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

6VAC35-71-20. Previous regulations terminated.

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC 35-51), and the Standards for Juvenile Residential Facilities, (6VAC35-140), for the regulation of all JCCs as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for secure detention facilities and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.

6VAC35-71-30. Certification.

A. The JCC shall maintain a current certification demonstrating compliance with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. The JCC shall demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations as interpreted by the assessment and compliance measures approved in accordance with board regulations or department procedures.

C. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

6VAC35-71-40. Relationship to the regulatory authority.

All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.

6VAC35-71-50. Variances.

A. Board action may be requested by the superintendent to relieve a JCC from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20) and in accordance with written procedures.

B. A variance may not be implemented prior to approval of the board.

6VAC35-71-60. Serious incident reports.

A. The following events shall be reported within 24 hours to the director or his designee:

1. Any serious illness, incident, injury, or accident involving injury or death of a resident;

2. Any absence from the facility without permission; and

3. All other situations required by written procedures.

B. As appropriate and applicable, the facility shall, within 24 hours and in accordance with written procedures, report the incidents listed in subsection A of this section to (i) the parent or legal guardian and (ii) the supervising court service unit or agency.

C. The facility shall prepare and maintain a written report of the events listed in subsection A of this section which shall contain the following information:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name or identifying information of the person who made the report to the supervising agency and to the parent or legal guardian; and

6. The name or identifying information of the person to whom the report was made, including any law enforcement or child protective service personnel.

D. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

E. In addition to the requirements of this section, any suspected child abuse and neglect shall be governed by 6VAC35-71-70 (suspected child abuse or neglect).

6VAC35-71-70. Suspected child abuse or neglect.

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with written procedures.

B. Any case of suspected child abuse or neglect occurring at the JCC, occurring on a JCC sponsored event or excursion, or involving JCC staff shall be reported within 24 hours, in accordance with written procedures, to (i) the director or his designee, (ii) the court services unit, and (iii) the resident's parent or legal guardian, as appropriate and applicable.

C. When a case of suspected child abuse or neglect is reported to child protective services a record shall be maintained at the facility that contains the following information:

1. The date and time the suspected abuse or neglect occurred;

2. A brief description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect; and

4. The name or identifying information of the person to whom the report was made at the local child protective services unit.

D. The resident's record shall contain a written reference that a report was made.

E. Written procedures shall be accessible to staff regarding the following:

1. Handling accusations of child abuse or neglect, including those made against staff;

2. Reporting, consistent with requirements of the Code of Virginia, and documenting suspected cases of child abuse or neglect to the local child protective services unit; and

3. Cooperating during any investigation.

6VAC35-71-80. Grievance procedure.

A. The superintendent or designee shall ensure the facility's compliance with the department's grievance procedure. The grievance procedure shall provide for the following:

1. Resident participation in the grievance process, with assistance from staff upon request;

2. Investigation of the grievance by an impartial and objective person who is not the subject of the grievance;

3. Documented, timely responses to all grievances with the supporting reasons for the decision;

4. At least one level of appeal;

5. Administrative review of grievances;

6. Protection of residents from retaliation or the threat of retaliation for filing a grievance; and

7. Immediate review of emergency grievances with resolution as soon as practicable but no later than eight hours.

B. Residents shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language and (ii) posted in an area accessible to residents.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

6VAC35-71-90. Resident advisory committee.

Each JCC, except RDC, shall have a resident advisory committee that is representative of the facility's population, that shall meet monthly with the superintendent or designees during which time the residents shall be given the opportunity to raise matters of concern to the residents and to have input into planning, problem-solving, and decision-making in areas of the residential program that affect their lives.

Part II
Administrative and Personnel

Article 1
General Provisions

6VAC35-71-100. Administration and organization.

Each JCC shall have an organizational chart that includes functions, services, and activities in administrative subunits, which shall be reviewed and updated as needed, as determined by the JCC superintendent or designee.

6VAC35-71-110. Organizational communications.

A. The JCC shall comply with department procedures requiring reports concerning major incidents, population data, employee vacancies, and other information as needed or required by department procedures.

B. The superintendent or designee shall meet, at least monthly, with all department heads and key staff members.

C. The superintendent or the assistant superintendent, chief of security, treatment program supervisor, or counseling supervisor, if designated by the superintendent, shall visit the living units and activity areas at least weekly to encourage informal contact with employees and residents and to observe informally the facility's living and working conditions. The superintendent shall make such visits, at a minimum, one time per month.

6VAC35-71-120. Community relationships.

Each JCC shall designate a community liaison and, if appropriate, a community advisory committee that serve as a link between the facility and the community, which may include neighbors, local law enforcement, and local government officials.

6VAC35-71-130. Participation of residents in human research.

A. Residents shall not be used as subjects of human research except as provided in 6VAC35-170 and in accordance with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

B. For the purpose of this section, human research means any systematic investigation using human subjects as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170. Human research shall not include research prohibited by state or federal statutes or regulations or research exempt from federal regulations or mandated by any applicable statutes or regulations. The testing of medicines or drugs for experimentation or research is prohibited.

Article 2
Background Checks

6VAC35-71-140. Background checks.

A. Except as provided in subsection C of this section, all persons who (i) accept a position of employment or (ii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of his duties in a JCC shall undergo the following background checks, in accordance with § 63.2-1726 of the Code of Virginia, to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the JCC:

1. A reference check;

2. A criminal history record check;

3. Fingerprint checks with the Virginia State Police and Federal Bureau of Investigations (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check, if applicable to the individual's job duties.

B. To minimize vacancy time, when the fingerprint checks required by subdivision 3 of this subsection have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of this subsection have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision 3 of this subsection; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed until such time as all the requirements of this section are completed.

C. Documentation of compliance with this section shall be retained.

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of this subsection who have contact with residents.

Article 3
Employee Orientation and Training

6VAC35-71-150. Required initial orientation.

A. Before the expiration of the employee's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the program;

4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures in accordance with 6VAC35-41-460 (emergency and evacuation procedures);

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform in their positions.

B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:

1. The facility's program philosophy and services;

2. The facility's behavior management program;

3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;

4. The residents' rules of conduct and responsibilities;

5. The residents' disciplinary and grievance procedures;

6. Child abuse and neglect and mandatory reporting;

7. Standard precautions; and

8. Documentation requirements as applicable to their duties.

C. Volunteers shall be oriented in accordance with 6VAC35-71-240 (volunteer and intern orientation and training).

6VAC35-71-160. Required initial training.

A. Each employee shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position responsibilities. Contractors shall receive training required to perform their position responsibilities in a correctional environment.

B. Direct care staff and employees responsible for the direct supervision of residents shall, before that employee is responsible for the direct supervision of a resident, complete at least 120 hours of training which shall include training in the following areas:

1. Emergency preparedness and response;

2. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;

3. The facility's behavior management program;

4. The residents' rules of conduct and the rationale for the rules;

5. The facility's behavior interventions, with restraint training required as applicable to their duties;

6. Child abuse and neglect;

7. Mandatory reporting;

8. Maintaining appropriate professional relationships;

9. Appropriate interaction among staff and residents;

10. Suicide prevention;

11. Residents' rights;

12. Health care training, if applicable, as provided in 6VAC35-71-910 (Health care training of direct care staff);

13. Standard precautions;

14. Procedures applicable to the employees' position and consistent with their work profiles; and

15. Other topics as required by the department and any applicable state or federal statutes or regulations.

C. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.

D. Employees who administer medication shall, prior to such administration, successfully complete a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.

E. Employees providing medical services shall be trained in tuberculosis control practices.

F. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

G. Volunteers and interns shall be trained in accordance with 6VAC35-71-240 (volunteer and intern orientation and training).

6VAC35-71-170. Retraining.

A. Each employee shall complete retraining that is specific to the individual's occupational class and the position's job description, and addresses any professional development needs.

1. Direct care staff and employees who provide direct supervision of the residents shall complete 40 hours of training annually, inclusive of the requirements of this section.

2. Administrative and managerial staff shall receive at least 40 hours of training annually.

3. Clerical and support staff shall receive at least 16 hours of training annually.

4. Contractors shall receive retraining as required to perform their position responsibilities in the correctional environment.

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care staff and employees who provide direct supervision of the residents shall complete annual retraining in the following areas:

1. Suicide prevention;

2. Maintaining appropriate professional relationships;

3. Appropriate interaction among staff and residents;

4. Child abuse and neglect;

5. Mandatory reporting;

6. Standard precautions;

7. Behavior management techniques; and

8. Other topics as required by the department and any applicable state or federal statutes or regulations.

D. All direct care staff shall receive training sufficient to maintain a current certification in first aid and cardiopulmonary resuscitation.

E. Employees who administer medication shall complete annual refresher training on the administration of medication.

F. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

G. All staff approved to apply physical restraints as provided for in 6VAC35-71-1130 (physical restraint) shall be trained as needed to maintain the applicable current certification.

H. All staff approved to apply mechanical restraints shall be retrained annually as required by 6VAC35-71-1180 (mechanical restraints).

I. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

Article 4
Personnel

6VAC35-71-180. Code of ethics.

A written set of rules describing acceptable standards of conduct for all employees shall be available to all employees.

6VAC35-71-190. Reporting criminal activity.

A. Staff shall be required to report all known criminal activity by residents or staff to the superintendent or designee.

B. The superintendent, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement and child protective services if applicable and appropriate, of suspected criminal violations by residents or staff.

C. The JCC shall assist and cooperate with the investigation of any such complaints and allegations as necessary.

6VAC35-71-200. Notification of change in driver's license status.

Staff whose job responsibilities may involve transporting residents shall (i) maintain a valid driver's license and (ii) report to the superintendent or designee any change in their driver's license status, including, but not limited to, suspensions, restrictions, and revocations.

Article 5
Volunteers

6VAC35-71-210. Definition of volunteers or interns.

For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.

6VAC35-71-220. Selection and duties of volunteers and interns.

A. Any JCC that uses volunteers or interns shall implement written procedures governing their selection and use. Such procedures shall provide for the evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns may not be responsible for the duties of direct care staff.

6VAC35-71-230. Volunteer and intern background checks.

A. Any individual who (i) volunteers or is an intern on a regular basis in a JCC and (ii) will be alone with a resident in the performance of the position's duties shall be subject to the background check requirements provided for in of 6VAC35-71-140 A (background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each volunteer or intern for whom a background investigation is required.

C. A JCC that uses volunteers or interns shall implement written procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

6VAC35-71-240. Volunteer and intern orientation and training.

A. Any individual who (i) volunteers on a regular basis or is an intern in a JCC and will be alone with the resident or (ii) is the designated leader for a group of volunteers shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the department;

4. The department and facility organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

1. Any procedures that are applicable to their duties and responsibilities; and

2. Their duties and responsibilities in the event of a facility evacuation as provided in 6VAC35-71-460 (emergency and evacuation procedures).

Article 6
Employee Records

6VAC35-71-250. Employee tuberculosis screening and follow-up.

A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; or

2. The employee develops chronic respiratory symptoms of three weeks duration.

D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Diseases, Policy TB 99-001, Virginia Department of Health, Division of Tuberculosis Prevention and Control.

Article 7
Residents' Records

6VAC35-71-260. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident, which shall include all correspondence and documents received by the JCC relating to the care of that resident and documentation of all case management services provided.

B. Separate health care records, including behavioral health, as applicable, and medical records, shall be kept on each resident. Health care records shall be maintained in accordance with 6VAC35-71-1020 (residents' health records) and applicable statutes and regulations. Behavioral health care records may be kept separately from other medical records.

C. Each case record and health care record shall be kept up to date and in a uniform manner in accordance with written procedures. Case records shall be released in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. The procedures for management of residents' records, written and automated, shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized

access, disclosure of information, and transportation of records between service sites; and

3. Designation of the person responsible for records management.

E. Active and closed records shall be kept in secure locations or compartments that are accessible only to authorized employees and are protected from unauthorized access, fire, and flood.

F. Each resident's written case and health care records shall be stored separately subsequent to the resident's discharge in accordance with applicable statutes and regulations.

G. Residents' inactive records shall be retained as required by The Library of Virginia.

6VAC35-71-270. Face sheet.

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, supervising agency, emergency contacts, and parents, if appropriate.

B. The face sheet shall be updated when changes occur and maintained in accordance with written procedures.

Part III
Physical Environment

6VAC35-71-280. Buildings and inspections.

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the appropriate building officials. There shall be a valid, current certificate of occupancy available at each JCC.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the facility's buildings and equipment, the facility shall maintain documentation of its request to schedule the annual inspection, as well as documentation of any necessary follow-up. For this subsection, the definition of annual shall be defined by the Virginia Department of Fire Programs, State Fire Marshal's Office.

C. The facility shall maintain a current copy of its compliance with annual inspection and approval by an independent, outside source in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;

2. The sewage disposal system, if applicable;

3. The water supply, if applicable;

4. Food service operations; and

5. Swimming pools, if applicable.

6VAC35-71-290. Equipment and systems inspections and maintenance.

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the superintendent.

1. The facility shall maintain a listing of all safety, emergency, and communications equipment and systems and the schedule established for inspections and testing.

2. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

6VAC35-71-300. Alternate power source.

Each JCC shall have access to an alternate power source to maintain essential services in an emergency.

6VAC35-71-310. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents so that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

6VAC35-71-320. Lighting.

A. Sleeping and activity areas shall provide natural lighting.

B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.

C. Night lighting shall be sufficient to observe residents.

D. Operable flashlights or battery-powered lanterns shall be accessible to each direct care staff on duty.

E. Outside entrances and parking areas shall be lighted.

6VAC35-71-330. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Hot water temperatures should be maintained at 100°F to 120°F.

6VAC35-71-340. Drinking water.

A. In all JCCs constructed after January 1, 1998, all sleeping areas shall have fresh drinking water for residents' use.

B. All activity areas shall have potable drinking water available for residents' use.

6VAC35-71-350. Toilet facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be toilet facilities available for resident use in all sleeping areas for each JCC constructed after January 1, 1998.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.

D. There shall be at least one bathtub in each facility.

E. The maximum number of employees on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

6VAC35-71-360. Sleeping areas.

A. Male and female residents shall have separate sleeping areas.

B. Beds in all facilities or sleeping areas established, constructed, or structurally modified after July 1, 1981, shall be at least three feet apart at the head, foot, and sides; and double-decker beds in such facilities shall be at least five feet apart at the head, foot, and sides. Facilities or sleeping areas established, constructed, or structurally modified before July 1, 1981, shall have a bed placement plan approved by the director or designee.

C. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

D. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

6VAC35-71-370. Furnishings.

All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

6VAC35-71-380. Disposal of garbage and waste.

Provision shall be made for the collection and legal disposal of all garbage and waste materials.

6VAC35-71-390. Hazardous materials and chemicals.

A. Each facility shall have a hazard communication plan that (i) governs the evaluation of the potential hazards of chemicals used at the facility and (ii) requires the communication of information to employees concerning hazards and appropriate protective measures.

B. All flammable, toxic, and caustic materials within the JCC shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

6VAC35-71-400. Smoking prohibition.

Residents shall be prohibited from using, possessing, purchasing, or distributing any tobacco products. Tobacco products, including cigarettes, cigars, pipes, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.

6VAC35-71-410. Space utilization.

A. Each JCC shall provide for the following:

1. An indoor recreation area with appropriate recreation materials;

2. An outdoor recreation area;

3. Kitchen facilities and equipment for the preparation and service of meals;

4. A dining area equipped with tables and seating;

5. Space and equipment for laundry equipment, if laundry is done on site;

6. Space for the storage of items such as first aid equipment, household supplies, recreational equipment, and other materials;

7. A designated visiting area that permits informal communication between residents and visitors, including opportunity for physical contact in accordance with written procedures;

8. Space for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials; and

9. A central medical room with medical examination facilities equipped in consultation with the health authority.

B. If a school program is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purpose.

6VAC35-71-420. Kitchen operation and safety.

A. Each facility shall have a food service operation maintenance plan that addresses the following: (i) food sanitation and safety procedures; (ii) the inspection of all food service, preparation, and dining areas and equipment; (iii) a requirement for sanitary and temperature-controlled storage facilities for food; and (iv) the monitoring of refrigerator and water temperatures.

B. Written procedures shall govern access to all areas where food or utensils are stored and the inventory and control of culinary equipment to which residents reasonably may be expected to have access.

C. Walk-in refrigerators and freezers shall be equipped to permit emergency exits.

D. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

6VAC35-71-430. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes but is not limited to (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Each facility shall have a written plan to control pests and vermin. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin. Any condition conducive to harboring or breeding insects, rodents, or other vermin shall be eliminated immediately. Each facility shall document efforts to eliminate such conditions.

6VAC35-71-440. Animals on the premises.

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

Part IV
Safety and Security

6VAC35-71-450. Fire prevention plan.

Each JCC shall develop and implement a fire prevention plan that provides for an adequate fire protection service.

6VAC35-71-460. Emergency and evacuation procedures.

A. Each JCC shall have a written emergency preparedness and response plan. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the facility's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for (i) provision of administrative direction and management of response activities; (ii) coordination of logistics during the emergency; (iii) communications; (iv) life safety of employees, contractors, interns, volunteers, visitors, and residents; (v) property protection; (vi) community outreach; (vii) and recovery and restoration;

4. Written emergency response procedures for (i) assessing the situation; (ii) protecting residents, employees, contractors, interns, volunteers, visitors, equipment, and vital records; and (iii) restoring services shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Requiring fire and emergency keys that are instantly identifiable by sight and touch;

e. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

f. Relocating residents, if necessary;

g. Notifying parents and legal guardians, as applicable and appropriate;

h. Alerting emergency personnel and sounding alarms;

i. Locating and shutting off utilities when necessary; and

j. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. All employees shall be trained to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. Contractors and volunteers shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. Such orientation shall be in accordance with the requirements of 6VAC35-71-150 (required initial orientation), 6VAC35-71-160 (required initial training), and 6VAC35-71-240 (volunteer and intern orientation and training).

D. The JCC shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, volunteers, and interns and shall be incorporated into (i) training for employees, contractors, interns, and volunteers; and (ii) orientation of residents to services.

E. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the facility shall take appropriate action to protect the health, safety and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the facility should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the facility shall (i) report the disaster or emergency to (a) the legal guardian and (b) the director or his designee of the conditions at the facility and (ii) report the disaster or emergency to the regulatory authority. Such reporting shall be made as soon as possible but no later than 72 hours after the incident is stabilized.

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can easily be seen by employees and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings; and

4. Specific problems encountered.

K. Each JCC shall assign one employee who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-71-470. Security procedures.

Each JCC shall follow written security procedures related to the following:

1. Post orders or shift duties for each security post;

2. Population count;

3. A control center that integrates all external and internal security functions and communications, is secured from residents' access, and is staffed 24 hours a day;

4. Control of the perimeter;

5. Actions to be taken regarding any escapes or absences without permission;

6. Searches of the buildings and premises; and

7. The control, detection, and disposition of contraband.

6VAC35-71-480. Searches of residents.

A. Written procedures shall govern searches of residents, including patdowns and frisk searches, strip searches, and body cavity searches, and shall include the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.

2. Searches are conducted only by personnel who are authorized to conduct such searches.

3. The resident shall not be touched any more than is necessary to conduct the search.

B. Strip searches and visual inspections of the vagina and anal cavity areas shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;

2. The search shall be conducted in an area that ensures privacy; and

3. Any witness to the search shall be of the same gender as the resident.

C. Manual and instrumental searches of the anal cavity or vagina, not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:

1. Performed only with the written authorization of the facility administrator or by a court order;

2. Conducted by a qualified medical professional;

3. Witnessed by personnel of the same gender as the resident; and

4. Fully documented in the resident's medical file.

6VAC35-71-490. Communications systems.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be a means for communicating between the control center and living units.

C. The facility shall be able to provide communications in an emergency.

6VAC35-71-500. Emergency telephone numbers.

An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

6VAC35-71-510. Weapons.

No firearms or other weapons shall be permitted on the JCC's premises and during JCC-related activities except as provided in written procedures or authorized by the director or designee. Written procedures shall govern any possession, use, and storage of authorized firearms and other weapons on the JCC's premises and during JCC-related activities.

6VAC35-71-520. Equipment inventory.

Written procedure shall govern the inventory and control of all security, maintenance, recreational, and medical equipment of the facility to which residents reasonably may be expected to have access.

6VAC35-71-530. Power equipment.

The facility shall implement written safety rules for use and maintenance of power equipment.

6VAC35-71-540. Transportation.

A. Each JCC shall have transportation available or make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and for the use and maintenance of vehicles.

C. Written procedure shall provide for the verification of appropriate licensure for staff whose duties involve transporting residents.

Part V
Residents' Rights

6VAC35-71-550. Prohibited actions.

Residents shall not be subjected to the following actions:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Denial of contacts and visits with the resident's attorney, a probation officer, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;

3. Any action that is humiliating, degrading, abusive, or unreasonably impinges upon the residents' rights;

4. Denial of equal access to agency programs and activities;

5. Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;

6. Subjection to unsanitary living conditions;

7. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

8. Denial of health care;

9. Denial of appropriate services and treatment;

10. Application of aversive stimuli, except as provided in this chapter or permitted pursuant to other applicable state regulations. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual, but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident;

11. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

12. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. Involuntary use of pharmacological restraints (administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition);

14. Discrimination on the basis of race, religion, national origin, sex, or physical disability; and

15. Other constitutionally prohibited actions.

6VAC35-71-560. Residents' mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate facility interests of order and security, nonlegal mail may be read, censored, or rejected in accordance with written procedures. The resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. For the purpose of this section, legal mail means a communication sent to or received from a designated class of correspondents, as defined in written procedures, including but not limited to the court, an attorney, and the grievance system or department administrators.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless (i) permission has been obtained from a court or (ii) the director or his designee has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized staff may read such mail, in accordance with written procedures.

E. Except as otherwise provided in this section, incoming and outgoing letters shall be held for no more than 24 hours and packages shall be held for no more than 48 hours, excluding weekends and holidays.

F. Upon request, each resident shall be given postage and writing materials for all legal correspondence and at least two other letters per week.

G. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

H. First class letters and packages received for residents who have been transferred or released shall be forwarded.

I. Written procedure governing correspondence of residents shall be made available to all employees and residents and updated as needed.

6VAC35-71-570. Telephone calls.

Telephone calls shall be permitted in accordance with written procedures that take into account the need for facility security and order, the resident's behavior, and program objectives.

6VAC35-71-580. Visitation.

A. A resident's contacts and visits with immediate family members or legal guardians shall not be subject to unreasonable limitations except as permitted by written procedures, other applicable regulations, or by order of a court.

B. Residents shall be permitted to have visitors, consistent with written procedures that take into account (i) the need for facility security and order, (ii) the behavior of individual residents and the visitors, and (iii) the importance of helping the resident maintain strong family and community relationships. Written procedures shall provide for the accommodation of special circumstances.

C. Copies of the visitation procedures shall be mailed, either electronically or via first class mail, to the residents' parents or legal guardians, as applicable and appropriate, and other applicable persons no later than close of the next business day after arrival at the JCC, unless a copy has already been provided to the individual.

D. Resident visitation at an employee's home is prohibited.

6VAC35-71-590. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as provided for in 6VAC35-41-560 (residents' mail), by telephone, or in person. Reasonable limits may be placed on such contacts as necessary to protect the security and order of the facility. For the purpose of this section a legal representative is defined as a court-appointed or retained attorney or a paralegal, investigator, or other representative from the attorney's office. Evidence that the attorney has been retained shall be required prior to permitting access.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. Written procedures shall be implemented for obtaining a resident's consent prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

6VAC35-71-600. Personal necessities.

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. Size-appropriate clothing and shoes for indoor or outdoor wear;

3. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

4. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens.

E. After issuance, blankets shall be cleaned or changed as needed.

6VAC35-71-610. Showers.

Residents shall have the opportunity to shower daily except as (i) provided in written procedures for the purpose of maintaining facility security or for the special management of maladaptive behavior if approved by the superintendent or designee or a mental health professional or (ii) approved by the regulatory authority.

6VAC35-71-620. Residents' privacy.

Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities except when constant supervision is necessary to protect the resident due to mental health issues. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

6VAC35-71-630. Nutrition.

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals, of which two are hot meals, and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Special diets or alternative dietary schedules, as applicable, shall be provided in the following circumstances: (i) when prescribed by a physician; (ii) when necessary to observe the established religious dietary practices of the resident; or (iii) when necessary for the special management of maladaptive behavior or to maintain facility security if approved by the superintendent or designee or a mental health professional. In such circumstances, the meals shall meet the minimum nutritional requirements of the U.S. Dietary Guidelines and any required approval shall be documented.

C. Menus of actual meals served shall be kept on file for at least six months.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the superintendent approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Each JCC shall assure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

6VAC35-71-640. Reading materials.

Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents.

6VAC35-71-650. Religion.

A. Residents shall not be required or coerced to participate in or unreasonably denied participation in religious activities.

B. Residents shall be informed of their rights relating to religious participation during orientation as provided in 6VAC35-71-680 (admission and orientation).

6VAC35-71-660. Recreation.

A. Each JCC shall implement a recreational program plan that includes:

1. Opportunities for individual and group activities;

2. Opportunity for large muscle exercise daily;

3. Scheduling so that activities do not conflict with meals, religious services, educational programs, or other regular events; and

4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills. Outdoor recreation will be available whenever practicable in accordance with the facility's recreation plan. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. Each recreational program plan shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in water related and swimming activities.

6VAC35-71-670. Residents' funds.

Residents' funds, including any per diem or earnings, shall be used only (i) for their benefit; (ii) for payment of any fines, restitution, costs, or support ordered by a court or administrative judge; or (iii) to pay restitution for damaged property or personal injury as determined by disciplinary procedures.

Part VI
Program Operation

Article 1
Placement, Transfer, and Release

6VAC35-71-680. Admission and orientation.

A. Written procedure governing the admission and orientation of residents to the JCC shall provide for:

1. Verification of legal authority for placement;

2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and provided for in 6VAC35-71-690 (residents' personal possessions);

3. Health screening as provided for in 6VAC35-71-940 (health screening at admission);

4. Notification of parent or legal guardian of admission;

5. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;

6. Interview with resident to answer questions and obtain information;

7. Explanation to resident of program services and schedules; and

8. Assignment of resident to a living unit, sleeping area, or room.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by 6VAC35-71-1090 (behavior management).

a. During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.

b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.

2. The grievance procedure as required by 6VAC35-71-80 (grievance procedure).

3. The disciplinary process as required by 6VAC35-71-1110 (disciplinary process).

4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-71-460 (emergency and evacuation procedures).

5. The resident's rights relating to religious participation as required by 6VAC35-71-650 (religion).

6VAC35-71-690. Residents' personal possessions.

A. Each JCC shall inventory residents' personal possessions upon admission and document the information in residents' case records. When a resident arrives at a JCC with items that the resident is not permitted to possess in the facility, staff shall:

1. Dispose of contraband items in accordance with written procedures;

2. If the items are nonperishable property that the resident may otherwise legally possess, securely store the property and return it to the resident upon release; or

3. Make reasonable documented efforts to return the property to the resident, or parent or legal guardian.

B. Personal property that remains unclaimed six months after a documented attempt to return the property may be disposed of in accordance with written procedures.

6VAC35-71-700. Classification plan.

A. A JCC shall utilize an objective classification system for determining appropriate security levels, the needs, and the most appropriate services of the residents and for assigning them to living units according to their needs and existing resources.

B. Residents shall be placed according to their classification levels. Such classification shall be reviewed as necessary in light of (i) the facility's safety and security and (ii) the resident's needs and progress.

6VAC35-71-710. Resident transfer between and within JCCs.

A. When a resident is transferred between JCCs, the following shall occur:

1. The resident's case records, including medical and behavioral health records, shall accompany the resident to the receiving facility; and

2. The resident's parents or legal guardian, if applicable and appropriate, and the court service unit or supervising agency shall be notified within 24 hours of the transfer.

B. When a resident is transferred to a more restrictive unit, program, or facility within a JCC or between JCCs, the JCC shall provide due process safeguards for residents prior to their transfer.

C. In the case of emergency transfers, such safeguards and notifications shall be instituted as soon as practicable after transfer.

6VAC35-71-720. Release.

A. Residents shall be released from a JCC in accordance with written procedure.

B. The case record of each resident serving an indeterminate commitment, who is not released pursuant to a court order, shall contain the following:

1. A discharge plan developed in accordance with written procedures;

2. Documentation that the release was discussed with the parent or legal guardian, if applicable and appropriate, the court services unit, and the resident; and

3. As soon as possible, but no later than 30 days after release, a comprehensive release summary placed in the resident's record and sent to the persons or agency that made the placement. The release summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. The names of persons to whom resident was released;

e. Dates of admission and release; and

f. Date the release summary was prepared and the identification of the person preparing it.

C. The case record of each resident serving a determinate commitment or released pursuant to an order of a court shall contain a copy of the court order.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate and applicable.

E. Upon discharge, the (i) date of discharge and (ii) the name of the person to whom the resident was discharged, if applicable, shall be documented in the case record.

Article 2
Programs and Services

6VAC35-71-730. Operational procedures.

Current operational procedures shall be accessible to all staff.

6VAC35-71-740. Structured programming.

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision, designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision;

3. Ensure the delivery of program services; and

4. Meet the objectives of any individual service plan.

B. Residents shall be provided the opportunity to participate in programming, as applicable, upon admission to the facility.

6VAC35-71-750. Communication with court service unit staff.

A. Each resident's probation or parole officer shall be provided with the contact information for an individual at the facility to whom inquiries on assigned resident cases may be addressed.

B. The resident's probation or parole officer shall be invited to participate in any scheduled classification and staffing team meetings at RDC and any scheduled treatment team meetings.

6VAC35-71-760. Communication with parents.

A. Each resident's parent or legal guardian, as appropriate and applicable, shall be provided with the contact information for an individual at the facility to whom inquiries regarding the resident may be addressed.

B. If contacted by the resident's parent or legal guardian, the facility shall provide the requesting individual with the opportunity to participate in any scheduled classification and staffing team meetings at RDC and any scheduled treatment team meetings.

6VAC35-71-770. Case management services.

A. The facility shall implement written procedures governing case management services, which shall address:

1. The resident's adjustment to the facility, group living, and separation from the resident's family;

2. Supportive counseling, as needed;

3. Transition and community reintegration planning and preparation; and

4. Communicating with (i) staff at the facility; (ii) the parents or legal guardians, as appropriate and applicable; (iii) the court service unit; and (iv) community resources, as needed.

B. The provision of case management services shall be documented in the case record.

6VAC35-71-780. Daily log.

A. A daily log shall be maintained, in accordance with written procedures, to inform staff of significant happenings or problems experienced by residents including, but not limited to, health and dental complaints and injuries.

B. Each entry in the daily log shall contain (i) the date of the entry, (ii) the name of the individual making the entry, and (iii) the time each entry is made.

6VAC35-71-790. Individual service plans.

A. An individual service plan shall be developed and placed in the resident's record within 30 days following arrival at the facility and implemented immediately thereafter. This section does not apply to residents who are housed at RDC for 60 days or less. If a resident remains at RDC for longer than 60 days, an individual plan shall be developed at that time, placed in the resident's record, and implemented immediately thereafter.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives, and strategies established for the resident;

4. Projected family involvement;

5. Projected date for accomplishing each objective; and

6. Status of the projected release plan and estimated length of stay except that this requirement shall not apply to residents who are determinately committed to the department.

C. Each individual service plan shall include the date it was developed and the signature of the person who developed it.

D. The resident and facility staff shall participate in the development of the individual service plan.

E. The supervising agency and resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

F. Copies of the individual service plan shall be provided to the (i) resident; (ii) parents or legal guardians, as appropriate and applicable, and (iii) placing agency.

G. The individual service plan shall be reviewed within 60 days of the development of the individual service plan and within each 90-day period thereafter.

H. The individual service plan shall be updated annually and revised as necessary. Any changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

6VAC35-71-800. Quarterly reports.

A. The resident's progress toward meeting his individual service plan goals shall be reviewed, and a progress report shall be prepared within 60 days of the development of the service plan and within each 90-day period thereafter. The report shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of the person who developed it.

C. All quarterly progress reports shall be reviewed with the resident and distributed to the resident's parents, legal guardian, or legally authorized representative; the supervising agency; and appropriate facility staff.

6VAC35-71-810. Behavioral health services.

Behavioral health services, if provided, shall be provided by an individual (i) licensed by the Department of Health Professions or (ii) who is working under the supervision of a licensed clinician.

Article 3
Supervision

6VAC35-71-820. Staff supervision of residents.

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, a rest day means a period of not less than 24 consecutive hours during which the direct care staff person has no responsibility to perform duties related to the operation of a JCC.

C. Direct care staff shall be scheduled with an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

E. There shall be at least one trained direct care staff on duty and actively supervising residents at all times that one or more residents are present.

F. The facility shall implement written procedures that address staff supervision of residents including contingency plans for resident illnesses, emergencies, and off-campus activities. These procedures shall be based on the:

1. Needs of the population served;

2. Types of services offered;

3. Qualifications of staff on duty; and

4. Number of residents served.

G. Staff shall regulate the movement of residents within the facility in accordance with written procedures.

H. No JCC shall permit an individual resident or group of residents to exercise control or authority over other residents except when practicing leadership skills as part of an approved program under the direct and immediate supervision of staff.

6VAC35-71-830. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities.

B. During the hours that residents are scheduled to sleep, there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building or living unit where residents are sleeping.

6VAC35-71-840. Outside personnel.

A. JCC staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Article 4
Work Programs

6VAC35-71-850. Facility work assignments.

A. Work assignments, whether paid or unpaid, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Work assignments shall not interfere with school programs, study periods, meals, or sleep.

6VAC35-71-860. Agreements governing juvenile industries work programs.

A. If the department enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, and workers' compensation insurance laws;

2. State the length of the agreement and the criteria by which it may be extended or terminated;

3. Specify where residents will work and, if not at a juvenile correctional center, the security arrangements at the work site; and

4. Summarize the educational, vocational, or job training benefits to residents.

B. The agreement shall address how residents will be hired and supervised, including:

1. The application and selection process;

2. The qualifications required of residents;

3. A requirement that there be a job description for each resident's position;

4. Evaluation of each resident's job-related behaviors and attitudes, attendance, and quality of work; and

5. Whether and how either party may terminate a resident's participation.

C. The agreement shall address resident's compensation including:

1. The manner by which and through what funding source residents are to be paid; and

2. If applicable, whether any deductions shall be made from the resident's compensation for subsistence payments, restitution to victims, etc.

D. As applicable, the agreement shall specify:

1. That accurate records be kept of the work program's finances, materials inventories, and residents' hours of work, and that such records be subject to inspection by either party and by an independent auditor;

2. How the project's goods or services will be marketed;

3. How proceeds from the project will be collected and distributed to the parties; and

4. Which party is responsible for providing:

a. The materials to be worked on;

b. The machinery to be used;

c. Technical training and supervision in the use of equipment or processes;

d. Utilities;

e. Transportation of raw materials and finished goods;

f. Disposal of waste generated in the work project; and

g. Safety and other special equipment and clothing.

Part VII
Health Care Services

6VAC35-71-870. Health care services definitions.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering heath care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.

6VAC35-71-880. Local health authority.

A physician, health administrator, government authority, health care contractor, supervising registered nurse or head nurse, or health agency shall be designated the local health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, including medical, nursing, dental, and mental health care, consistent with applicable statutes, prevailing community standards, and medical ethics. All medical, psychiatric, dental, and nursing matters are the province of the physician, dentist, and nurse, respectively.

6VAC35-71-890. Provision of health care services.

A. The health care provider shall be guided by recommendations of the American Academy of Family Practice or the American Academy of Pediatrics, as appropriate, in the direct provision of health care services.

B. Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other health-trained personnel shall provide care within their level of training and certification.

6VAC35-71-900. Health care procedures.

A. The department shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian, if under the age of 18, or the resident, if over the age of 18;

4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to designated staff who may have to respond to a medical or dental emergency:

1. The physician or dentist to be contacted;

2. Name, address, and telephone number of a relative or other person to be notified; and

3. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

6VAC35-71-910. Health care training of direct care staff.

Direct care staff shall be trained to respond to health emergencies. The training shall include the following:

1. Recognition of signs and symptoms and knowledge of actions required in emergencies;

2. Administration of first aid and cardiopulmonary resuscitation (CPR);

3. Methods of obtaining assistance;

4. Signs and symptoms of mental illness, retardation, and chemical dependency; and

5. General health care needs of residents, including communicable diseases.

6VAC35-71-920. Health-trained personnel.

A. Health-trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health-trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-71-930. Consent to and refusal of health care services.

A. The resident or parent or legal guardian, as applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure; and (ii) the alternatives to it.

B. Health care services, as defined in 6VAC35-101-10 (definitions), shall be provided in accordance with § 54.1-2969 of the Code of Virginia.

C. Residents may refuse, in writing, medical treatment and care. This subsection does not apply to medication refusals that are governed by 6VAC35-41-1070 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-71-940. Health screening at admission.

Written procedure shall require that:

1. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or health-trained staff, using a health screening form that has been approved by the department's health administrator.

2. Residents admitted to the facility who are identified through the screening required in subdivision 1 of this section as posing a health risk to themselves or others are shall be separated from the facility's general population until they are no longer a risk. During the period of separation, the residents shall receive services approximating those available to the facility's general population, as deemed appropriate to their condition.

3. Immediate health care is provided to residents who need it.

6VAC35-71-950. Tuberculosis screening.

A. Within seven days of placement, each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall comply with guidelines and recommendations (Screening for TB Infection and Disease, Policy TB 99-001) of the Virginia Department of Health, Division of Tuberculosis Prevention and Control, for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

6VAC35-71-960. Medical examinations.

A. Within five days of arrival at a JCC, all residents who are not directly transferred from another JCC shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. This examination shall include the following:

1. Complete medical, immunization, and psychiatric history;

2. Recording of height, weight, body mass index, temperature, pulse, respiration, and blood pressure;

3. Reports of medical laboratory testing and clinical testing results, as deemed medically appropriate, to determine both clinical status and freedom from communicable disease;

4. Medical examination, including gynecological assessment of females, when appropriate;

5. Documentation of immunizations administered; and

6. A plan of care, including initiation of treatment, as appropriate.

B. For residents transferring from one JCC to another, the report of a medical examination within the preceding 13 months shall be acceptable.

C. Each resident shall have an annual physical examination by or under the direction of a licensed physician.

6VAC35-71-970. Dental examinations.

A. Within seven days of arrival at a JCC, all residents who are not directly transferred from another JCC shall undergo a dental examination by a dentist.

B. For residents transferring from one JCC to another, the report of a dental examination within the preceding 13 months shall be acceptable.

C. Each resident shall have an annual dental examination by a dentist and routine prophylactic treatment.

6VAC35-71-980. Immunizations.

Each resident's immunizations shall be updated consistent with the regulations (12VAC5-90-110) of the Virginia Department of Health, Office of Epidemiology, Division of Immunization, at the time the record is reviewed. Exemptions for immunizations shall be granted consistent with state or federal law.

6VAC35-71-990. Health screening for intrasystem transfers.

A. All residents transferred between JCCs shall receive a medical, dental, and mental health screening by health-trained or qualified health care personnel upon arrival at the facility. The screening shall include:

1. A review of the resident's health care record;

2. Discussion with the resident on his medical status; and

3. Observation of the resident.

B. All findings shall be documented and the resident shall be referred for follow-up care as appropriate.

6VAC35-71-1000. Infectious or communicable diseases.

A. A resident with a known communicable disease that can be transmitted person-to-person shall not be housed in the general population unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

B. The facility shall implement written procedures, approved by a medical professional, that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter; and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

C. Employees providing medical services shall be trained in tuberculosis control practices.

6VAC35-71-1010. Suicide prevention.

Written procedure shall provide that (i) there is a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care staff are trained and retrained in the implementation of the program.

6VAC35-71-1020. Residents' health records.

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician.

B. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

C. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist based on the needs of the resident.

D. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

E. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

F. Written procedure shall provide that residents' active health records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;

2. Readily accessible in case of emergency; and

3. Made available to authorized staff consistent with applicable state and federal laws.

6VAC35-71-1030. First aid kits.

A. Each facility shall have first aid kits that shall be maintained in accordance with written procedures that shall address the (i) contents; (ii) location; and (iii) method of restocking.

B. The first aid kit shall be readily accessible for minor injuries and medical emergencies.

6VAC35-71-1040. Sick call.

A. All residents shall have the opportunity daily to request health care services.

B. Resident requests for health care services shall be documented, reviewed for the immediacy of need and the intervention required, and responded to daily by qualified medical staff. Residents shall be referred to a physician consistent with established protocols and written or verbal orders issued by personnel authorized by law to give such orders.

C. The frequency and duration of sick call shall be sufficient to meet the health needs of the facility population. For the purpose of this section, sick call shall mean the evaluation and treatment of a resident in a clinical setting, either on or off site, by a qualified health care professional.

6VAC35-71-1050. Emergency medical services.

A. Each JCC shall have access to 24-hour emergency medical, mental health, and dental services for the care of an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call.

B. Procedures shall include arrangements for the following:

1. Utilization of 911 emergency services;

2. Emergency transportation of residents from the facility;

3. Security procedures for the immediate transfer of residents when appropriate;

4. Use of one or more designated hospital emergency departments or other appropriate facilities consistent with the operational procedures of local supporting rescue squads;

5. Response by on-call health care providers to include provisions for telephonic consultation, guidance, or direct response as clinically appropriate; and

6. On-site first aid and crisis intervention.

C. Staff who respond to medical or dental emergencies shall do so in accordance with written procedures.

6VAC35-71-1060. Hospitalization and other outside medical treatment of residents.

A. When a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely and in accordance with applicable security procedures that are applied consistent with the severity of the medical condition; and

2. Staff shall escort and supervise residents when outside the facility for hospital care or other medical treatment, until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under the Psychiatric Inpatient Treatment of Minors Act (§§ 16.1-355 et seq. of the Code of Virginia).

B. In accordance with applicable laws and regulations, the parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

6VAC35-71-1070. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq.). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except when otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall successfully complete a medication training program approved by the Board of Nursing and receive annual refresher training as required before they can administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or

verbal orders signed by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;

2. Drug name;

3. Schedule for administration, to include notation of each dose administered or refused;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. As addressed in the physician's standing orders, staff shall promptly contact a physician, nurse, pharmacist, or poison control center and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. For the purpose of this section, a medical incident means an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication incident does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a department's health administrator. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals, which shall address:

1. Manner by which medication refusals are documented; and

2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

6VAC35-71-1080. Release physical.

Each resident shall be medically examined by a physician or qualified health care practitioner operating under the supervision of a physician within 30 days prior to release, unless exempted by the responsible physician based on a sufficiently recent full medical examination.

Part VIII
Behavior Management

6VAC35-71-1090. Behavior management.

A. Each JCC shall implement a behavior management program approved by the director or designee. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan.

B. Written procedures governing this program shall provide the following:

1. List the behavioral expectations for the resident;

2. Define and list techniques that are used and available for use;

3. Specify the staff members who may authorize the use of each technique;

4. Specify the processes for implementing; and

5. Means of documenting and monitoring of the program's implementation.

C. When substantive revisions are made to the behavior management program, written information concerning the revisions shall be provided to the residents and direct care staff prior to implementation.

6VAC35-71-1100. Behavior support contract.

A. When a resident exhibits a pattern of behavior indicating a need for behavioral support in addition to that provided in the facility's behavior management program, a written behavior support contract shall be developed, in accordance with written procedures, with the intent of assisting the resident to self-manage these behaviors. Procedures governing behavior support contracts shall address (i) the circumstances under which such contracts will be utilized and (ii) the means of documenting and monitoring the contract's implementation.

B. Prior to working alone with an assigned resident, each staff member shall review and be prepared to implement the resident's behavior support contract.

6VAC35-71-1110. Disciplinary process.

A. Each JCC shall follow written procedures for handling (i) minor resident misbehavior through an informal process and (ii) instances when a resident is charged with a violation of the rules of conduct through the formal process outlined below. Such procedures shall provide for (i) graduated sanctions and (ii) staff and resident orientation and training on the procedures.

B. When staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process, staff shall prepare a disciplinary report detailing the alleged rule violation. The resident shall be given a written copy of the report within 24 hours of the alleged rule violation.

C. After the resident receives notice of an alleged rule violation, the resident shall be provided the opportunity to admit or deny the charge.

1. The resident may admit to the charge in writing to a superintendent or designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to any further review.

2. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the resident does not understand the charge or the implication of the admission, the formal process for resolving the matter detailed in subsection D of this section shall be followed.

D. The formal process for resolving rule violations shall provide the following:

1. A disciplinary hearing to determine if substantial evidence exists to find the resident guilty of the rule violation shall be scheduled to occur no later than seven days, excluding weekends and holidays, after the rule violation. The hearing may be postponed with the resident's consent.

2. The resident alleged to have committed the rule violations shall be given at least 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent.

3. The disciplinary hearing on the alleged rule violation shall:

a. Be conducted by an impartial and objective staff who shall determine (i) what evidence is admissible, (ii) the guilt or innocence of the resident, and (iii) if the resident is found guilty of the rule violation, what sanctions shall be imposed;

b. Allow the resident to be present throughout the hearing, unless the resident waives the right to attend, his behavior justifies exclusion, or another resident's testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented;

c. Permit the resident to make a statement and present evidence and to request relevant witnesses on his behalf. The reasons for denying such requests shall be documented;

d. Permit the resident to request a staff member to represent him and question the witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf; and

e. Be documented, with a record of the proceedings kept for six months.

4. A written record shall be made of the hearing disposition and supporting evidence. The hearing record shall be kept on file at the JCC.

5. The resident shall be informed in writing of the disposition and, if found guilty of the rule violation, the reasons supporting the disposition and the right to appeal.

6. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the case record.

7. The superintendent or designee shall review all disciplinary hearings and dispositions to ensure conformity with procedures and regulations.

8. The resident shall have the right to appeal the disciplinary hearing decision to the superintendent or designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays.

E. When it is necessary to place the resident in confinement to protect the facility's security or the safety of the resident or

others, the charged resident may be confined pending the formal hearing for up to 24 hours. Confinement for longer than 24 hours must be reviewed at least once every 24 hours by the superintendent or designee who was not involved in the incident. For any confinement exceeding 72 hours, notice shall be made in accordance with 6VAC35-71-1140 D (room confinement).

6VAC35-71-1120. Timeout.

A. Facilities that use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (time-out) shall implement procedures governing the following:

1. The conditions, based on the resident's chronological and developmental level, under which a resident may be placed in timeout;

2. The maximum period of timeout based on the resident's chronological and developmental level; and

3. The area in which a resident is placed.

B. A resident in timeout shall be able to communicate with staff.

C. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

D. Use of timeout and staff checks on the residents shall be documented.

6VAC35-71-1130. Physical restraint.

A. Physical restraint shall be used as a last resort only after less restrictive behavior intervention techniques have failed or to control residents whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with intent to inflict injury.

2. Trained staff members may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.

3. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Each JCC shall implement written procedures governing use of physical restraint that shall include:

1. A requirement for training in crisis prevention and behavior intervention techniques that staff may use to control residents whose behaviors pose a risk;

2. The staff position who will write the report and time frame;

3. The staff position who will review the report for continued staff development for performance improvement and the time frame for this review;

4. Methods to be followed should physical restraint, less intrusive behavior interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; and

5. Identification of control techniques that are appropriate for identified levels of risk.

C. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;

2. Staff involved;

3. Justification for the restraint;

4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;

5. Duration;

6. Description of method or methods of physical restraint techniques used;

7. Signature of the person completing the report and date; and

8. Reviewer's signature and date.

6VAC35-71-1140. Room confinement.

A. Written procedures shall govern how and when residents may be confined to a locked room.

B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and more frequently if indicated by the circumstances.

C. Residents who are confined to a locked room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be approved in accordance with written procedures and documented.

D. If a resident is confined to a locked room for more than 24 hours, the superintendent or designee shall be notified.

E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) the steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, as designated in written procedures. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.

F. The superintendent or designee shall make personal contact with each resident who is confined to a locked room each day of confinement.

G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.

H. If the resident, after being confined to a locked room, exhibits self-injurious behavior (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional; and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate.

6VAC35-71-1150. Isolation.

A. When a resident is confined to a locked room for a specified period of time as a disciplinary sanction for a rule violation (isolation), the provisions of 6VAC35-71-1140 (room confinement) apply.

B. Room confinement during isolation shall not exceed five consecutive days.

C. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, (v) writing, and (vi) physical exercise as provided in 6VAC35-71-1140 (room confinement).

D. Residents who are placed in isolation shall be housed no more than one to a room.

6VAC35-71-1160. Administrative segregation.

A. Residents who are placed in administrative segregation units shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.

B. Residents who are placed in administrative segregation units shall be afforded basic living conditions approximating those available to the facility's general population and as provided for in written procedures. Exceptions may be made in accordance with written procedures when justified by clear and substantiated evidence. If residents who are placed in administrative segregation are confined to a room or placed in isolation, the provisions of 6VAC35-71-1140 (room confinement) and 6VAC35-71-1150 (isolation) apply, as applicable.

C. For the purpose of this section, administrative segregation means the placement of a resident, after due process, in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or of other residents for reasons of health or safety.

6VAC35-71-1170. Chemical agents.

Chemical agents, such as pepper spray, shall not be used by staff for behavior management or facility security purposes.

6VAC35-71-1180. Mechanical restraints.

A. Written procedure shall govern the use of mechanical restraints and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and mobile restraint chair may be used;

2. That the superintendent or designee shall be notified immediately upon using restraints in an emergency situation;

3. That restraints shall never be applied as punishment;

4. That residents shall not be restrained to a fixed object or restrained in an unnatural position;

5. That each use of mechanical restraints, except when used to transport a resident, shall be recorded in the resident's case file or in a central log book; and

6. That the facility maintains a written record of routine and emergency distribution of restraint equipment.

B. If a JCC uses mechanical restraints, written procedure shall provide that (i) all staff who are authorized to use restraints shall receive department-approved training in their use, including procedures for checking the resident's circulation and checking for injuries; and (ii) only properly trained staff shall use restraints.

C. For the purpose of this section, mechanical restraint shall mean the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means to control his physical activities when the individual being restricted does not have the ability to remove the device.

6VAC35-71-1190. Monitoring residents placed in mechanical restraints.

A. Written procedure shall provide that when a resident is placed in mechanical restraints staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. Make a direct personal check on the resident at least every 15 minutes and more often if the resident's behavior warrants.

B. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall immediately consult with a mental health professional. This consultation shall be documented.

C. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. Any such protocols shall be in compliance with the procedures required by 6VAC35-71-1200 (restraints for medical and mental health purposes).

6VAC35-71-1200. Restraints for medical and mental health purposes.

Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure should identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.

Part IX
Private JCCs

6VAC35-71-1210. Private contracts for JCCs.

A. Each privately operated JCC shall abide by the requirement of (i) the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia), (ii) its governing contract, (iii) this chapter, and (iv) applicable department procedures, including but not limited to procedures relating to case management, the use of physical restraint and mechanical restraints, confidentiality, visitation, community relationships, and media access.

B. Each privately operated JCC shall develop procedures, approved by the department, to facilitate the transfer of the operations of the facility to the department in the event of the termination of the contract.

6VAC35-71-1220. Privately operated JCCs.

In addition to the other requirements of this chapter, privately operated JCCs shall house only residents who have been committed to the department and who have been properly transferred to the facility by the department, unless otherwise specified by contract with the department.

Part X
Boot Camps

6VAC35-71-1230. Definition of boot camp.

For the purpose of this chapter, a boot camp shall mean a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony. Such programs utilize a form of military-style discipline whereby employees are authorized to respond to minor institutional offenses, at the moment they notice the institutional offenses being committed, by imposing immediate sanctions that may require the performance of some physical activity, such as pushups or some other sanction, as provided for in the program's written procedures.

6VAC35-71-1240. Staff physical and psychological qualifications.

The boot camp shall include in the qualifications for staff positions a statement of:

1. The physical fitness level requirements for each staff position; and

2. Any psychological assessment or evaluation required prior to employment.

6VAC35-71-1250. Residents' physical qualifications.

The boot camp shall have written procedures that govern:

1. Admission, including a required written statement from a physician that the resident meets the American Pediatric Society's guidelines to participate in contact sports and from a licensed mental health professional that the resident is an appropriate candidate for a boot camp program; and

2. Discharge should a resident be physically unable to keep up with the program.

6VAC35-71-1260. Residents' nonparticipation.

The boot camp shall have written procedures approved by the department for dealing with residents who are not complying with boot camp program requirements.

6VAC35-71-1270. Program description.

The boot camp shall have a written program description that states:

1. How residents' physical training, work assignment, education and vocational training, and treatment program participation will be interrelated;

2. The length of the boot camp program and the kind and duration of treatment and supervision that will be provided upon the resident's release from the residential program;

3. Whether residents will be cycled through the program individually or in platoons; and

4. The program's incentives and sanctions, including whether military or correctional discipline will be used. If military style discipline is used, written procedures shall specify what summary punishments are permitted.

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 (6VAC35-71)

Health Services Intake Medical Screening, HS 1/10.

Intrasystem Transfer Medical Review, HS 2/09.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-71)

Screening for TB Infection and Disease, Policy TB 99-001 (www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Policies/screening.htm), Virginia Department of Health.

Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC, Morbidity and Mortality Weekly Report, July 7, 2006, Vol. 55, No. RR-9 (http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5509a1.htm), Department of Health and Human Services, Centers for Disease Control and Prevention.

A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.

VA.R. Doc. No. R09-1820; Filed January 11, 2010, 2:25 p.m.

Proposed Regulation

Title of Regulation: **6VAC35-101. Regulations Governing Juvenile Secure Detention Centers (adding 6VAC35-101-10 through 6VAC35-101-1270).**

Statutory Authority: §§ 16.1-322.7 and 66-10 of the Code of Virginia.

Public Hearing Information:

April 6, 2010 - 7 p.m. - General Assembly Building, 9th and Broad Streets, Richmond, VA

April 7, 2010 - 10 a.m. - Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: April 7, 2010.

Agency Contact: Janet P. Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Basis: Section 16.1-322.7 of the Code of Virginia requires the Board of Juvenile Justice (board) to make, adopt, and promulgate regulations governing the operation of local or regional detention centers. This mandate requires the regulation of the minimum standards for the administration and operation of the facilities.

The board is entrusted with general authority under § 66-10 of the Code of Virginia to promulgate such regulations as are necessary to carry out the provisions of the laws of the Commonwealth administered by the director or the department.

Purpose: The board regulates three distinct types of facilities: (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses. At present, these facilities are governed by two separate regulations: (a) the Standards for Juvenile Residential Facilities (6VAC35-140) and (b) Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

The department has had several iterations of regulations governing the residential facilities regulated by the board. Earlier, the department had five separate regulations governing secure detention homes, postdispositional confinement in secure detention, predispositional and postdispositional group homes, and juvenile correctional centers. These regulations applied to the facilities in conjunction with the Standards for the Interdepartmental Regulation of Children's Residential Facilities (CORE regulation) that went into effect in 1981.

The board's Standards for Juvenile Residential Facilities (6VAC35-140) was most recently reviewed and revised in May 2005 and consists of the board's regulations for all facilities it regulates. This regulation establishes the minimum standards for residential facilities in the Commonwealth's juvenile justice system and covers program operations, health care, personnel, facility safety, and physical environment. It contains additional provisions for secure custody facilities, boot camps, work camps, juvenile industries, and independent living programs.

The Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) is a reenactment of the CORE regulation in its entirety. This regulation was adopted by the board in September 2008 to comply with the requirements of Chapter 873 of the 2008 Acts of the General Assembly, which mandated the repeal of the CORE regulation and action to be taken by the affected boards by October 31, 2009. This regulation has more expansive provisions than Standards for Juvenile Residential Facilities

(6VAC35-140) and also contains minimum requirements for the different facilities regulated by the board.

Throughout the years, problems have been identified in implementing the requirements contained in these two separate regulations given the distinct nature of the three types of facilities. Accordingly, the board has approved consolidating current regulatory requirements for residential programs and dividing them into separate regulations governing (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses. This revamping of the regulatory scheme was done in conjunction with a comprehensive review of the current provisions. This review was done with the goals of enhancing the clarity of the regulatory requirements and achieving improvements that will be reasonable and prudent, and will not impose an unnecessary burden on regulants or the public.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents in juvenile secure detention centers and citizens in the community. With clear expectations for the administrators managing these facilities, the facilities will be able to operate more smoothly, which will become extremely important in this current climate of limited financial resources, and will continue to allow for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

Substance: The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each type of facility regulated by the board (juvenile correctional centers, detention centers, and group homes/halfway houses). Each provision was reviewed as to whether it was (i) appropriate for the type of facility; (ii) clear in its intent and effect; and (iii) necessary for the proper management of the facility. Amendments were made to accommodate the detention centers' specific needs and to enhance program and service requirements to best provide for the residents.

The following changes were made to the proposed regulation:

1. Contains only those provisions relating to that type of facility's operation and management.

2. Removes any responsibilities of the department, regulatory authority, or the board currently included in the regulations (i.e., issuance of license or certificate and sanctions).

3. Reorganizes the order of the regulatory provisions and groups the provisions with similar provisions. The proposed regulation has sections for: (i) general provisions; (ii) administration and personnel; (iii) physical environment; (iv) safety and security; (v) residents' rights; (vi) program operation; (vii) work programs; (viii) health care services; and (ix) behavior management. Facility specific parts are included as needed (i.e., postdispositional detention programs).

4. The following changes are proposed to the General Provisions:

a. Deletes many definitions (such as the definition of "day" and "therapy"); changes definitions to correspond with those used in other regulations; and, where appropriate, incorporates definitions into the substantive provisions of the regulation. Adds definitions for "direct care staff," "direct supervision," "regulatory authority," and "written."

b. Cross-references the board's certification regulation (6VAC35-20) for consistency in application of variances.

c. Allows serious incident and child protective services reports to be noted in the resident's case record and documented elsewhere. Mirrors recent changes adopted by the Department of Social Services in its residential regulation.

5. The following changes are proposed in Administration and Personnel:

a. Amends the provisions relating to community relationships and adopts different provisions specific to the type of setting and locations.

b. Amends the background checks section to conform with the board variance issued November 2008.

c. Reworks the training sections. Separates out (i) orientation; (ii) required initial training; and (iii) retraining.

d. Adds a requirement for staff who transport residents to report any changes in their license status.

e. Clusters all provisions relating to volunteers together.

f. Reworks the staff and resident tuberculosis screening requirements to conform with the language of the Division of Tuberculosis Control in the Department of Health.

g. Removes the requirement to retain face sheets permanently.

h. Amends the qualifications section to require the facility to follow the procedures of the governing authority or locality and ensure employees meet applicable job qualifications.

6. The following changes are proposed to Physical Environment:

a. Amends requirements relating to fire inspections.

b. Groups all space utilization requirements into one section and removes the current regulatory requirements

to accommodate study space and all requirements relating to live-in staff.

c. Cross-references the board's reimbursement regulations (6VAC35-30) for new construction.

d. Requires same-sex sleeping rooms (not sleeping areas) and deletes the prohibition of having more than four residents in a sleeping area.

e. Adopts board policy language regarding the facility's smoking prohibitions.

f. Deletes the space requirements for a dining area.

7. The following changes are proposed to Safety and Security:

a. Clarifies the requirements for residents and contract workers in implementing and training on the emergency/evacuation plan.

b. Reworks the searches of residents section to address facility-specific issues.

c. Prohibits weapons on the premises except by law enforcement.

8. The following changes are proposed to Residents' Rights:

a. Changes requirement to mail visitation procedure from within 24 hours to by "the end of the next business day."

b. Adds a section titled "Contact with attorneys, courts, and law enforcement."

c. Removes the provisions regarding incontinent residents.

d. Removes the requirements for the facility to have a witness present when mail is examined by staff, to hold cash and stamps for the residents, and for the residents to be able to send correspondence at their own expense. Retains the requirement for the facility to provide two stamps per week and to allow correspondence with attorney/courts.

e. Allows an exception to the privacy provision when mental health issues require constant supervision.

9. The following changes are proposed to Program Operation:

a. Separates and reworks the sections regarding individual service plans and quarterly reports.

b. Requires one staff member certified in first aid and CPR for every 16 residents present. Current regulation requires one staff member certified in first aid/CPR to be present whenever residents are being supervised.

10. The health care sections are reworked and updated.

11. The following changes are proposed to Behavior Management:

a. Changes the requirement for all residents to have a behavior support plan to a requirement for a plan to be developed when there is a need for supports in addition to those provided for in the behavior management program.

b. Reworks the disciplinary process for an expedited process in detention centers.

c. Reworks all provisions relating to room confinement, isolation, and administrative segregation.

d. Prohibits the use of chemical agents.

12. Redrafts confusing language and deletes unnecessary verbiage.

13. Makes other technical and stylistic changes, such as deleting provisions that are duplicative of other regulatory or statutory requirements (e.g., the restatement that the facility must comply with laws or procedures).

Issues: The Board of Juvenile Justice serves as the regulatory authority for secure residential facilities, both juvenile correctional centers and detention centers, and the group homes and halfway houses operated by or funded through the department. Currently, these facilities are governed by two separate regulations: (i) Standards for Juvenile Residential Facilities (6VAC35-140) and (ii) Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51), unless specifically exempted.

The current regulatory scheme has several difficulties in application. Each regulation has the full force and effect of law; unfortunately, some of the provisions are contradictory or conflict. Additionally, there are numerous exclusions for the different types of facilities from a variety of regulatory provisions. Sometimes it is unclear exactly which facilities are exempted and to which section or subsection such exceptions are applicable.

To address these issues the department considered two courses of action: (i) consolidate the two existing regulations into one or (ii) separate the two regulations into three regulations, one for each different type of facility regulated by the board.

Due to the distinct characteristics of the types of facilities regulated by the Board of Juvenile Justice and the complexity of applying a single regulation to the appropriate facility, it was concluded that it would be difficult to regulate all such facilities in one single regulation. The board approved pursuing the second course of action. Thus, the department is proposing separate regulations for the three distinct types of facilities it regulates: (i) juvenile correctional centers; (ii) detention centers; and (iii) group homes and halfway houses.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents in secure detention centers and citizens in the community. With clear expectations for the administrators managing these facilities, the facilities will be able to be operate more smoothly, which will become extremely important in this current climate of limited financial resources, and will continue to allow for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

This regulation poses 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 Board of Juvenile Justice (Board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation that will govern juvenile secure detention centers. Most provisions in this new regulation will not vary in any substantive way from those mandated by current regulation, current Board policy, and current law. There are, however, several new requirements in the new regulation. Specifically, the Board proposes to:

• Change requirements for resident sleeping areas to allow more than four residents to share a sleeping area,

• Change the number of CPR/first aid certified staff that are required to be on shift when there are residents present (this change will harmonize this regulation with current practice),

• Require copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission,

• Institute an exception to the rule the requires staff to give residents privacy bathing, dressing, or using the bathroom so that suicidal residents can be supervised at all times,

• Allow greater flexibility in the timing of yearly fire inspections, and

• Eliminate the requirement that staff write an initial plan that outlines a structured program of care and a daily routine within three days of a resident's commitment.

Result of Analysis. The benefits likely exceed the costs for all proposed changes. The costs and benefits of these changes are discussed below.

Estimated Economic Impact. Current regulations require that no more than four residents sleep in one room. The Board proposes to remove the requirement that there be no more than four residents per bedroom because the Board now allows dormitory sleeping areas in facilities. Although no detention homes currently have this type of sleeping area, localities will benefit from this regulatory change as it allows greater flexibility in building new facilities where space is used more efficiently. This change will make the detention center regulation consistent with the regulation for juvenile correctional facilities.

Current regulations require that each detention home have one CPR/first aid certified staff member working whenever there are residents present in the home. Current practice, however, dictates that there be one certified staff member working for every 16 residents that are present. The Board proposes to amend this regulation to reflect current practice. No detention home will presently incur any costs but this regulatory change will remove the flexibility to change practice that these homes currently enjoy.

Current regulations require that copies of facilities' visitation procedures to be mailed to parents of new residents within 24 hours of the resident's admission. The Board proposes to change this requirement so that facility staff have until the end of the business day following an admission to mail this information. Facility staff will benefit from having slightly more flexibility to mail out information to parents on days when mail is picked up and as it fits into staff duties.

Current regulations require that residents be given privacy from sight supervision by staff of the opposite sex when they are bathing, dressing or using bathroom facilities. The Board proposes to allow an exception to this rule if constant supervision is needed because of a mental health condition. This change will benefit facility staff that currently cannot both follow the current regulatory requirement and ensure the safety of residents who wish to harm themselves. Suicidal residents may temporarily lose their right to privacy on account of this change but this cost is likely outweighed by the benefit of increased safety for these individuals.

Current regulations require detention centers to undergo a fire inspection at least every 13 months. Since fire inspectors, rather than facility staff, conduct these inspections, this puts staff in an untenable position of guaranteeing the timing of someone else's work. The Board proposes to change the regulation so that staff must attempt to arrange a fire inspection within 13 months of the previous inspection, maintain documentation of current certification, and document attempts to schedule the fire inspection should that inspection not be completed within 13 months of the last inspection. This change will benefit detention center staff by only making them responsible for the actions that they can take.

Current regulations require detention home staff to draft a plan that outlines a structured program of care and a daily routine for new residents within three days of their commitment. The Board proposes to replace this requirement with a provision for new residents to participate in ongoing programs upon arrival (and until release). Since all aspects of life in a detention canter are already structured, the Board believes that requiring a separate written plan for each resident is duplicative and unnecessary. Staff at detention

centers are likely to benefit from this regulatory change because it allows them to eliminate a task that is likely unnecessary.

Businesses and Entities Affected. DJJ reports that this regulation will affect the 24 locally or commission operated juvenile secure detention centers.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's (DPB) economic impact analysis of 6VAC35-101, Regulation Governing Juvenile Secure Detention Centers. The agency is in agreement with DPB's analysis.

Summary:

The Board of Juvenile Justice (board) proposes to consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation (6VAC35-101) that will govern juvenile secure detention centers. Both current board regulations address the requirements not only for juvenile secure detention centers, but also for juvenile correctional centers and group homes and halfway houses. The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each distinct type of facility. After a comprehensive review, amendments were made to accommodate the type of facility's specific needs and to enhance program and service requirements to best provide for the residents.

Most provisions in the new regulation will not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) changing requirements for resident sleeping areas to allow more than four residents to share a sleeping area; (ii) changing the number of CPR/first aid certified staff that are required to be on shift when residents are present; (iii) requiring copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission; (iv) instituting an exception to the rule requiring staff to give residents privacy bathing; dressing; or using the bathroom so that suicidal residents can be supervised at all times; (v) allowing greater flexibility in the timing of yearly fire inspections; and (vi) eliminating the requirement that staff write an initial plan that outlines a structured program of care and a daily routine within three days of a resident's commitment.

CHAPTER 101
REGULATION GOVERNING JUVENILE SECURE DETENTION CENTERS

Part I
General Provisions

6VAC35-101-10. Definitions.

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

"Annual" means within 13 months of the previous event or occurrence.

"Behavior management" means those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations and resident and employee safety and security.

"Board" means the Board of Juvenile Justice.

"Case record" or "record" means written or electronic information relating to one resident and the resident's family, if applicable. This information includes, but is not limited to, social, medical, psychiatric, and psychological records; reports; demographic information; agreements; all correspondence relating to care of the resident; service plans with periodic revisions; aftercare plans and discharge summary; and any other information related to the resident.

"Contraband" means any item possessed by or accessible to a resident or found within a detention center or on its premises (i) that is prohibited by statute, regulation, or the facility's procedure, (ii) that is not acquired through approved channels or in prescribed amounts, or (iii) that may jeopardize the safety and security of the detention center or individual residents.

"Department" means the Department of Juvenile Justice.

"Detention center" or "secure juvenile detention center" means a local, regional, or state, publicly or privately operated secure custody facility that houses individuals who are ordered to be detained pursuant to the Code of Virginia. This term does not include juvenile correctional centers.

"Direct care staff" means the staff whose primary job responsibilities are (i) maintaining the safety, care, and well-being of residents, (ii) implementing the structured program of care and the behavior management program, and (iii) maintaining the security of the facility.

"Direct supervision" means the act of working with residents while not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Facility administrator" means the individual who has the responsibility for the on-site management and operation of the detention center on a regular basis.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, and prescriptions and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering heath care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

"Living unit" means the space in a detention center in which a particular group of residents reside that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one living unit or several separate living units.

"On duty" means the period of time an employee is responsible for the direct supervision of one or more residents.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Postdispositional detention program" means a program in a detention center serving residents who are subject to a sentence or dispositional order for placement in the detention center for a period exceeding 30 days pursuant to subdivision A 16 of § 16.1-278.8 and subsection B of § 16.1.284.1 of the Code of Virginia.

"Premises" means the tracts of land on which any part of a detention center is located and any buildings on such tracts of land.

"Regulatory authority" means the board or the department as designated by the board.

"Resident" means an individual who is confined in a detention center.

"Rules of conduct" means a listing of a detention center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

6VAC35-101-20. Applicability.

Parts I (6VAC35-101-10 et seq.) though VIII (6VAC35-101-1070 et seq.) of this chapter apply to juvenile detention centers for both predispositional and postdispositional programs unless specifically excluded. Part IX (6VAC35-101-1160 et seq.) of this chapter only applies to detention centers operating postdispositional detention programs for residents sentenced for a period exceeding 30 days pursuant to subdivision A 16 of § 16.1-278.8 and subsection B of § 16.1.284.1 of the Code of Virginia.

6VAC35-101-30. Previous regulations terminated.

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities (6VAC 35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140) for the regulation of all detention centers as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for juvenile correctional centers and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.

6VAC35-101-40. Certification.

A. The detention center shall comply with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20). The detention center shall:

1. Demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations;

2. Implement approved plans of action to correct findings of noncompliance are being implemented; and

3. Ensure no noncompliances may pose an immediate and direct danger to residents.

B. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

C. The current license or certificate shall be posted at all times in a place conspicuous to the public.

6VAC35-101-50. Relationship to the regulatory authority.

A. All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.

B. A written report of any contemplated changes in operation that would affect the terms of the license or certificate or the continuing eligibility for licensure or certification shall be submitted to the regulatory authority. A change may not be implemented prior to approval by the regulatory authority.

6VAC35-101-60. Relationship with the department.

A. The director or designee shall be notified within five working days of any significant change in administrative structure or newly hired facility administrator.

B. Any of the following that may be related to the health safety or human rights of residents shall be self-reported to the director or designee within 10 days: (i) lawsuits against the detention center or its governing authority and (ii) settlements with the detention center or its governing authority.

6VAC35-101-70. Variances.

A. Board action may be requested by the facility administrator to relieve a detention center from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. Any such variance may not be implemented prior to approval of the board.

6VAC35-101-80. Serious incident reports.

A. The following events shall be reported within 24 hours to (i) the applicable court service unit; (ii) either the parent or legal guardian, as appropriate and applicable; and (iii) the director or designee:

1. Any serious incident, accident, illness, or injury to the resident;

2. The death of a resident;

3. Any suspected case of child abuse or neglect at the detention center, on a detention center-sponsored event or excursion, or involving detention center staff as provided in 6VAC35-41-60 (suspected child abuse and neglect);

4. Any disaster, fire, emergency, or other condition that may jeopardize the health, safety, and welfare of residents; and

5. Any absence from the detention center without permission.

B. The detention center shall notify the director or designee within 24 hours of any events detailed in subsection A of this section and all other situations required by the regulatory authority of which the facility has been notified.

C. The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or designee. The report shall contain the following information:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name or identifying information of the person who made the report to the applicable court service unit and to either the parent or legal guardian, as appropriate and applicable; and

6. The name or identifying information of the person to whom the report was made, including any law-enforcement or child protective service personnel.

D. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

E. In addition to the requirements of this section, any serious incident involving an allegation of child abuse or neglect at the detention center, at a detention center sponsored event, or involving detention center staff shall be governed by 6VAC35-101-90 (suspected child abuse or neglect).

6VAC35-101-90. Suspected child abuse or neglect.

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with written procedures.

B. Written procedures shall be distributed to all staff members and shall at a minimum provide for:

1. Handling accusations against staff;

2. Reporting and documenting suspected cases of child abuse and neglect; and

3. Cooperating during any investigation.

C. Any case of suspected child abuse or neglect shall be reported and documented as required in 6VAC35-101-80 (serious incident reports). The resident's record shall contain a written reference that a report was made.

6VAC35-101-100. Grievance procedure.

A. Written procedure shall provide that residents are oriented to and have continuing access to a grievance procedure that provides for:

1. Resident participation in the grievance process with assistance from staff upon request;

2. Investigation of the grievance by an objective employee who is not the subject of the grievance;

3. Documented, timely responses to all grievances with the reasons for the decision;

4. At least one level of appeal;

5. Administrative review of grievances;

6. Protection from retaliation or threat of retaliation for filing a grievance; and

7. Hearing of an emergency grievance within eight hours.

B. Each resident shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language and (ii) posted in an area easily accessible to residents and their parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

Part II
Administrative and Personnel

Article 1
General Provisions

6VAC35-101-110. Responsibilities of the governing authority.

A. The detention center's governing body or authority (governing authority) shall be clearly identified.

B. The governing authority shall appoint a facility administrator to whom it delegates the authority and responsibility for the on-site administrative direction of the detention center.

C. A written decision-making plan shall be developed and implemented and shall provide for a staff person with the qualifications of a facility administrator to be designated to assume the temporary responsibility for the operation of the detention center. Each plan shall include an organizational chart.

D. Written procedures shall be developed and implemented to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. Improvements shall be implemented when indicated.

6VAC35-101-120. Insurance.

A. Documentation of the following insurance coverage shall be maintained:

1. Liability insurance covering the premises and the detention center's operations, including all employees and volunteers, if applicable.

2. Insurance necessary to comply with Virginia's minimum insurance requirements for all vehicles used to transport residents, including vehicles owned by staff.

B. Staff who use personal vehicles for official business, including transporting residents, shall be informed of the requirements to provide and document insurance coverage for such purposes.

6VAC35-101-130. Participation of residents in human research.

A. Written procedures approved by its governing authority shall govern the review, approval, and monitoring of human research. Human research means any systematic investigation, involving a resident or a resident's parents, guardians, or family members as the subject of the research, which may expose the subject to physical or psychological injury and which departs from the application of established and accepted therapeutic methods appropriate to meet the individual's needs. Human research does not include statistical analysis of information readily available on the subject that does not contain any identifying information or research exempted by federal research regulations pursuant to 45 CFR 46.101(b).

B. Information on residents shall be maintained as provided in 6VAC35-101-330 (maintenance of residents' records) and all records and information related to the human research shall be kept confidential in accordance with applicable laws and regulations.

C. The procedures may require periodic progress reports of any research project and a formal final report of all completed research projects.

Article 2
Hiring

6VAC35-101-140. Job descriptions.

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title or position;

2. Duties and responsibilities of the incumbent;

3. Job title or identification of the immediate supervisor; and

4. Minimum education, experience, knowledge, skills, and abilities required for entry level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position prior to assuming that position's duties.

6VAC35-101-150. Qualifications.

A. Detention centers subject to (i) the rules and regulations of the governing authority or (ii) the rules and regulations of a local government personnel office shall develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority. Detention centers not subject to rules and regulations of the governing authority or a local government personnel office shall follow the minimum entry-level qualifications of the Virginia Department of Human Resource Management.

B. When services or consultations are obtained on a contractual basis they shall be provided by professionally qualified personnel.

6VAC35-101-160. Physical examination.

When the qualifications for a position require a given set of physical abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

6VAC35-101-170. Employee and volunteer background checks.

A. Except as required by subsection C, all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of that person's duties shall undergo the following background checks in accordance with § 63.2-1726 of the Code of Virginia to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents:

1. A reference check;

2. A criminal history record check;

3. Fingerprint checks with the Virginia State Police and Federal Bureau of Investigations (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time, when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed until such time as all the requirements of this section are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-101-310 (personnel records).

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of subsection A of this section who have contact with residents.

Article 3
Employee Orientation and Training

6VAC35-101-180. Required initial orientation.

A. Initial orientation shall be provided to all full-time and part-time staff, relief staff, and contractors who provide services to residents on a regular basis, in accordance with each position's job description.

B. Before the expiration of the individual's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the program;

4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

6. The practices of confidentiality;

7. The residents' rights;

8. The basic requirements of and competencies necessary to perform in his positions;

9. The facility's program philosophy and services;

10. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

11. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;

12. The residents' rules of conduct and responsibilities;

13. The residents' disciplinary process as provided for in 6VAC35-101-1080 (disciplinary process);

14. The residents' grievance procedures as provided for in 6VAC35-101-100 (grievance procedure);

15. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

16. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and

17. Documentation requirements as applicable to his duties.

C. Volunteers shall be oriented in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).

6VAC35-101-190. Required initial training.

A. Each full-time and part-time employee and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the jobs.

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

2. Contractors shall receive training required to perform their position responsibilities in a detention center.

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents shall complete training in the following areas:

1. Emergency preparedness and response as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

2. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

3. The residents' rules of conduct and the rationale for the rules;

4. The facility's behavior intervention procedures, with physical and mechanical restraint training required as applicable to their duties and as required by subsection D of this section;

5. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

6. Maintaining appropriate professional boundaries and relationships;

7. Interaction among staff and residents;

8. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

9. Residents' rights;

10. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and

11. Procedures applicable to the employees' position and consistent with their work profiles.

D. Employees who are authorized by the facility administrator to restrain a resident, as provided for in 6VAC35-101-1090 (physical restraint) and 6VAC35-101-1130 (mechanical restraints), shall be trained in the facility's approved restraint techniques within 90 days of such authorization and prior to applying any restraint techniques.

E. Employees who administer medication shall have, prior to such administration and as provided for in 6VAC35-101-1060 (medication), successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.

F. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

G. Volunteers and interns shall be trained in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).

6VAC35-101-200. Retraining.

A. Each full-time and part-time employee and relief staff shall complete retraining that is specific to the individual's occupational class, the position's job description, and addresses any professional development needs.

B. All full-time and part-time employees and relief staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures as provided for in 6VAC35-101-480 (emergency and evacuation procedures).

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);

3. Maintaining appropriate professional relationships;

4. Interaction among staff and residents;

5. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and

6. Behavior intervention procedures.

D. All staff approved to apply physical restraints, as provided for in 6VAC35-101-1090 (physical restraint) shall be trained as needed to maintain the applicable current certification.

E. All staff approved to apply mechanical restraints shall be retrained annually as required by 6VAC35-101-1130 (mechanical restraints).

F. Employees who administer medication shall complete annual refresher training as provided for in 6VAC35-101-1060 (medication).

G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

H. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

Article 4
Personnel

6VAC35-101-210. Written personnel procedures.

Written personnel procedures approved by the governing authority or facility administrator shall be developed, implemented, and readily accessible to each staff member.

6VAC35-101-220. Code of ethics.

A written code of ethics shall be available to all employees.

6VAC35-101-230. Reporting criminal activity.

A. Written procedures shall require staff to report all known criminal activity by residents or staff to the facility administrator including, but not limited to, offenses listed in §§ 53.1-203 (felonies by prisoners); 18.2-55 (bodily injuries caused by prisoners); 18.2-48.1 (abduction by prisoners); 18.2-64.1 (carnal knowledge of certain minors); 18.2-64.2 (carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender); and 18.2-477.1 (escapes from juvenile facility) of the Code of Virginia.

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department, if applicable and appropriate, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.

C. The detention center shall assist and cooperate with the investigation of any such complaints and allegations as necessary.

6VAC35-101-240. Notification of change in driver's license status.

Staff whose job responsibilities may involve transporting residents shall be required to (i) maintain a valid driver's license and (ii) report to the facility administrator or designee any change in their driver's license status including but not limited to suspensions, restrictions, and revocations.

6VAC35-101-250. Political activity.

Written procedures governing any campaigning, lobbying, and political activities by employees that are consistent with applicable statutes and state or local policies shall be developed and implemented. The procedure shall be made available to all employees.

6VAC35-101-260. Physical or mental health of personnel.

When an individual poses a direct threat to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the direct care or direct supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the direct care or direct supervision of residents. The results of any medical information or documentation of any disability-related inquiries shall be maintained separately from the employee's personnel records maintained in accordance with 6VAC35-101-310 (personnel records). For the purpose of this section a direct threat means a significant risk of substantial harm.

Article 5
Volunteers

6VAC35-101-270. Definition of volunteers or interns.

For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.

6VAC35-101-280. Selection and duties of volunteers and interns.

A. Any detention center that uses volunteers or interns shall develop and implement written procedures governing their selection and use. Such procedures shall provide for the objective evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns shall neither be responsible for the duties of direct care staff nor for the direct supervision of the residents.

6VAC35-101-290. Background checks for volunteers and interns.

A. Any individual who (i) volunteers on a regular basis or is an intern and (ii) will be alone with a resident in the performance of that person's duties shall be subject to the background check requirements in 6VAC35-101-170 A (employee and volunteer background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each intern and volunteer for whom a background investigation is required. Such records shall be kept in accordance with 6VAC35-101-310 (personnel records).

C. A detention center that uses volunteers or interns shall have procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

6VAC35-101-300. Volunteer and intern orientation and training.

A. Volunteers and interns shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the facility;

4. The facility's organizational structure;

5. Security, population control, emergency, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

1. Any procedures that are applicable to their duties and responsibilities; and

2. Their duties and responsibilities in the event of a facility evacuation as provided for in 6VAC35-101-510 (emergency and evacuation procedures).

Article 6
Employee Records

6VAC35-101-310. Personnel records.

A. Separate up-to-date written or automated personnel records shall be maintained on each (i) employee and (ii) volunteer or intern on whom a background check is required.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;

2. Educational background and employment history;

3. Written references or notations of oral references;

4. Annual performance evaluations;

5. Date of employment for each position held and separation date;

6. Documentation of compliance with requirements of Virginia law regarding child protective services and criminal history background investigations;

7. Documentation of the verification of any educational requirements and of professional certification or licensure, if required by the position;

8. Documentation of all training required by this chapter and any other training received by individual staff; and

9. A current job description.

C. If applicable, health records, including reports of any required health examinations, shall be maintained separately from the other records required by this section.

D. Personnel records on contract service providers and volunteers and interns may be limited to the verification of the completion of any required background checks as required by 6VAC35-101-170 (employee and volunteer background checks).

6VAC35-101-320. Employee tuberculosis screening and follow-up.

A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; and

2. The employee develops chronic respiratory symptoms of three weeks' duration.

D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Disease, Policy 99-001, Virginia Department of Health, Division of Tuberculosis Prevention and Control.

Article 7
Residents' Records

6VAC35-101-330. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident that shall include all correspondence and documents received by the detention center relating to the care of that resident and documentation of all case management services provided.

B. A separate health record may be kept on each resident. The resident's active health records shall be kept in accordance with 6VAC35-101-1030 (residents' health care records) and applicable laws and regulations.

C. Each case record and health record shall be kept (i) up to date, (ii) in a uniform manner, and (iii) confidential from unauthorized access. Case records shall be released in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. Written procedures shall provide for the management of all records, written and automated, and shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquisition of information only to persons legally authorized according to federal and state laws;

2. If automated records are utilized, the procedures shall address:

a. How records are protected from unauthorized access;

b. How records are protected from unauthorized Internet access;

c. How records are protected from loss;

d. How records are protected from unauthorized alteration; and

e. How records are backed up.

3. Security measures to protect records from (i) loss, unauthorized alteration, inadvertent or unauthorized access, or disclosure of information; and (ii) during transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the detention center ceases to operate.

E. The procedure shall specify what information is available to the resident.

F. Active and closed written records shall be kept in secure locations or compartments that are accessible to authorized staff and shall be protected from unauthorized access, fire, and flood.

G. All case records shall be retained as governed by The Library of Virginia.

6VAC35-101-340. Face sheet.

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, birthplace, gender, race, unique numerical identifier, religious preference, and admission date; and

2. Names, addresses, and telephone numbers of the applicable court service unit, emergency contacts, and parents or legal guardians, as appropriate and applicable.

B. Information shall be updated when changes occur.

C. Upon discharge, the (i) date of discharge and (ii) name of the person to whom the resident was discharged, if applicable, shall be added to the face sheet.

Part III
Physical Environment

6VAC35-101-350. Buildings and inspections.

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the detention center's buildings and equipment, documentation of the facility's request to schedule the annual inspection as well as documentation of any necessary follow-up with fire prevention authorities shall be maintained.

C. A current copy of the detention center's annual inspection and approval, in accordance with state and local inspection laws, regulations, and ordinances, of the systems listed below shall be maintained. These inspections shall be of the:

1. General sanitation;

2. Sewage disposal system;

3. Water supply; and

4. Food service operations.

D. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the regulatory authority and by other appropriate regulatory agencies. Any planned construction, renovation, enlargement, or expansion of a detention center shall follow the submission and approval requirements of the Regulations for State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30) and of any other applicable regulatory authorities.

6VAC35-101-360. Equipment and systems inspections and maintenance.

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the facility administrator. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

6VAC35-101-370. Alternate power source.

The facility shall have access to an alternate power source for use in an emergency.

6VAC35-101-380. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

6VAC35-101-390. Lighting.

A. Sleeping and activity areas shall provide natural lighting.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. There shall be night lighting sufficient to observe residents.

D. Operable flashlights or battery powered lanterns shall be accessible to each direct care staff member on duty.

E. Outside entrances and parking areas shall be lighted.

6VAC35-101-400. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F to 120°F.

6VAC35-101-410. Drinking water.

A. In all detention centers constructed after January 1, 1998, all sleeping areas shall have fresh drinking water for the residents' use.

B. All activity areas shall have potable drinking water available for the residents' use.

6VAC35-101-420. Toilet facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be toilet facilities available for resident use in all sleeping areas for each detention center constructed after January 1, 1998.

C. There shall be at least one toilet, one hand basin, and one shower or bathtub for every eight residents for detention centers constructed before July 1, 1981. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.

D. There shall be at least one bathtub in each facility.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

6VAC35-101-430. Sleeping areas.

A. Males and females shall have separate sleeping rooms.

B. Beds shall be at least three feet apart at the head, foot, and sides; and double-decker beds shall be at least five feet apart at the head, foot, and sides.

C. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

D. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

E. The environment of sleeping areas shall be, during sleeping hours, maintained in a manner that is conducive to sleep and rest.

6VAC35-101-440. Furnishings.

All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

6VAC35-101-450. Disposal of garbage and management of hazardous materials.

A. Provision shall be made for the collection and legal disposal of all garbage and waste materials.

B. All flammable, toxic, and caustic materials within the facility shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

6VAC35-101-460. Smoking prohibition.

Tobacco products, including cigarettes, cigars, pipes, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.

6VAC35-101-470. Space utilization.

A. Each detention center shall provide for the following:

1. Indoor and outdoor recreation areas;

2. School classrooms when a school program is operated at the detention center developed in consultation with the local educational authorities;

3. Kitchen facilities and equipment for the preparation and service of meals;

4. Space and equipment for laundry, if laundry is done at the detention center;

5. A designated visiting area that permits informal communication between residents and visitors, including

opportunity for physical contact in accordance with written procedures;

6. Storage space for items such as first aid equipment, household supplies, recreational equipment, and other materials;

7. Space for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials; and

8. A central medical room with medical examination facilities developed and equipped in consultation with the health authority.

B. If a school programs is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purposes.

6VAC35-101-480. Kitchen operation and safety.

A. Meals shall be served in areas equipped with tables and benches or chairs that are size and age appropriate for the residents.

B. Written procedures shall govern access to all areas where food or utensils are stored and the inventory and control of all culinary equipment to which the residents reasonably may be expected to have access.

C. Walk-in refrigerators and freezers shall be equipped to permit emergency exits.

D. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

E. Residents shall not be permitted to work in the detention center's food service.

6VAC35-101-490. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes, but is not limited to, (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings and (ii) all areas where residents, staff, and visitors reasonably may be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin.

6VAC35-101-500. Animals on the premises.

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

Part IV
Safety and Security

6VAC35-101-510. Emergency and evacuation procedures.

A. A written emergency preparedness and response plan shall be developed. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the detention center in an emergency;

2. Analysis of the detention center's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of employees, contractors, interns, volunteers, visitors, and residents; property protection; fire protection service; community outreach; and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, interns, volunteers, and visitors; equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying parents and legal guardians, as applicable and appropriate;

g. Alerting emergency personnel and sounding alarms;

h. Locating and shutting off utilities when necessary; and

i. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. Emergency preparedness and response training shall be developed for all employees to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall be conducted in accordance with 6VAC35-101-180 (required initial orientation) through 6VAC35-101-200 (retraining) and include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. Contractors and volunteers shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. Such orientation shall be in accordance with the requirements of 6VAC35-101-180 (required initial orientation) and 6VAC35-101-300 (volunteer and intern orientation and training).

D. The annual review of the emergency preparedness plan shall be documented, and revisions shall be made as deemed necessary. Such revisions shall be communicated to employees, contractors, interns, and volunteers and incorporated into training for employees, contractors, interns and volunteers, and orientation of residents to services.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, appropriate actions shall be taken to protect the health, safety, and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the detention center first should respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the disaster or emergency shall be reported to the legal guardian and the applicable court service unit and the conditions at the detention center and the disaster or emergency shall be reported to the director or designee as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can be seen easily by staff and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the detention center's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in accessing resident emergency information.

K. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including:

a. Head count, and

b. Practice in notifying emergency authorities; and

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

L. One staff member shall be assigned to ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-101-520. Control center.

To maintain the internal security, a control center that is secured from residents' access shall be staffed 24 hours a day

and shall integrate all external and internal security functions and communications networks.

6VAC35-101-530. Control of perimeter.

A. In accordance with a written plan, the detention center's perimeter shall be controlled by appropriate means to provide that residents remain within the perimeter and to prevent unauthorized access by the public.

B. Pedestrians and vehicles shall enter and leave at designated points in the perimeter.

6VAC35-101-540. Escapes.

Written procedure shall govern staff actions to be taken regarding escapes and any absence from the facility without permission. Any such procedure shall provide for the release of information consistent with the provisions of § 16.1-309.1 of the Code of Virginia.

6VAC35-101-550. Contraband.

Written procedure shall provide for the control, detection, and disposition of contraband. Such procedures shall govern searches of residents, as required by 6VAC35-101-560 (searches of residents), and searches of the premises and shall provide for respecting residents' rights.

6VAC35-101-560. Searches of residents.

A. Written procedures shall govern searches of residents, including patdowns and frisk searches, strip searches, and body cavity searches, and shall include the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.

2. Searches are conducted only by personnel who are authorized to conduct such searches.

3. The resident shall not be touched any more than is necessary to conduct the search.

B. Strip searches and visual inspections of the vagina and anal cavity areas shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;

2. The search shall be conducted in an area that ensures privacy; and

3. Any witness to the search shall be of the same gender as the resident.

C. Manual and instrumental searches of the anal cavity or vagina, not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:

1. Performed only with the written authorization of the facility administrator or by a court order;

2. Conducted by a qualified medical professional;

3. Witnessed by personnel of the same gender as the resident; and

4. Fully documented in the resident's medical file.

6VAC35-101-570. Communications systems.

A. There shall be a means for communicating between the control center and living areas.

B. The detention center shall be able to provide communications in an emergency.

6VAC35-101-580. Telephone access and emergency numbers.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

C. An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

6VAC35-101-590. Keys.

A. The detention center shall have a written key control plan to keep keys secure at all times.

B. Fire and emergency keys shall be instantly identifiable by sight and touch.

C. There shall be different master keys for the interior security and outer areas.

6VAC35-101-600. Weapons.

Written procedures shall be developed and implemented to govern the possession and use of firearms, pellet guns, air guns, and other weapons on the detention center's premises. The procedure shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises unless the weapons are:

1. In the possession of and use by authorized law-enforcement personnel admitted to facilities in response to emergencies; or

2. Stored in secure weapons lockers outside the secure perimeter of the facility by law-enforcement personnel conducting official business at the facility.

6VAC35-101-610. Area and equipment restrictions.

Written procedure shall govern the inventory and control of all security, maintenance, recreational, and medical

equipment of the detention center to which residents reasonably may be expected to have access.

6VAC35-101-620. Power equipment.

Written safety rules shall be developed and implemented for the use and maintenance of power equipment.

6VAC35-101-630. Transportation.

A. Each detention center shall have transportation available or make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and for the use of vehicles.

C. Written procedure shall provide for the verification of appropriate licensure for staff whose duties involve transporting residents.

6VAC35-101-640. Transportation of residents; transfer to department.

A. Residents shall be transported in accord with Guidelines for Transporting Juveniles in Detention issued by the board in accord with § 16.1-254 of the Code of Virginia.

B. When a resident is transported to the department from a detention center, all information pertaining to the resident's medical, educational, behavioral, and family circumstances during the resident's stay in detention shall be sent either in a written document or electronically to the department (i) with the resident, if the detention center is given at least 24 hours notice; or (ii) within 24 hours after the resident is transported, if such notice is not given.

Part V
Residents' Rights

6VAC35-101-650. Prohibited actions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Denial of contacts and visits with the resident's attorney, a probation officer, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;

3. Any action that is humiliating, degrading, or abusive;

4. Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;

5. Subjection to unsanitary living conditions;

6. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

7. Denial of health care;

8. Denial of appropriate services and treatment;

9. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations; aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual, but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident;

10. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

11. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

12. Involuntary use of pharmacological restraints (administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition);

13. Discrimination on the basis of race, religion, national origin, sex, or physical disability; and

14. Other constitutionally prohibited actions.

6VAC35-101-660. Residents' mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate interests of the facility's order and security, nonlegal mail may be read, censored, or rejected in accordance with written procedures. The resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. Legal mail shall mean any written material that is sent to or received from a designated class of correspondents, as defined in procedures, which shall include any court, legal counsel, or administrators of the

grievance system, the governing authority, the department, or the regulatory authority.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardians, guardian ad litems, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless permission has been obtained from a court or the facility administrator or his designee has determined that there is reasonable belief that the security of the facility is threatened. When so authorized, staff may read such mail in accordance with written procedures.

E. Except as otherwise provided in this section, incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays.

F. If requested by the resident, postage and writing materials shall be provided for outgoing legal correspondence and at least two other letters per week.

G. First-class letters and packages received for residents who have been transferred or released shall be forwarded.

H. Written procedure governing correspondence of residents shall be made available to all staff and residents and shall be reviewed annually and updated as needed.

6VAC35-101-670. Telephone calls.

Telephone calls shall be permitted in accordance with procedures that take into account the need for security and order, resident behavior, and program objectives.

6VAC35-101-680. Visitation.

A. A resident's contacts and visits with family or legal guardians shall not be subject to unreasonable limitations except as permitted by written procedures, other applicable regulations, or by order of a court.

B. Residents shall be permitted reasonable visiting privileges, consistent with written procedures, that take into account (i) the need for security and order, (ii) the behavior of the residents and visitors, (iii) the importance of helping the resident maintain strong family and community ties, and (iv) whenever possible, flexible visiting hours.

C. Visitation procedures shall be provided upon request to the parent or legal guardian, as appropriate and applicable, and the residents.

6VAC35-101-690. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as required by 6VAC35-101-660 (residents' mail), by telephone, or in person. Reasonable limits may be placed on such contacts as necessary to protect the security and order of the facility. For the purpose of this section a legal representative is defined as a court appointed or retained attorney or a paralegal, investigator, or other representative from that attorney's office.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, although they may do so voluntarily.

1. Residents' consent shall be obtained prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

3. Each facility shall have procedures for establishing a resident's consent to any such contact and for documenting the resident's decision. The procedures may provide for (i) notification of the parent or legal guardian, as appropriate and applicable, prior to the commencement of questioning; and (ii) opportunity, at the resident's request, to confer with an attorney, parent or legal guardian, or other person in making the decision whether to consent to questioning.

6VAC35-101-700. Personal necessities.

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. Size appropriate clothing and shoes for indoor or outdoor wear;

3. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

4. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens and table linens.

E. After issuance, blankets shall be cleaned or changed as needed.

6VAC35-101-710. Showers.

Residents shall have the opportunity to shower daily.

6VAC35-101-720. Clothing.

Provision shall be made for each resident to have an adequate supply of clean, size appropriate clothing and shoes for indoor or outdoor wear.

6VAC35-101-730. Residents' privacy.

Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities, except when constant supervision is necessary to protect the resident due to mental health issues. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

6VAC35-101-740. Nutrition.

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Special diets or alternative dietary schedules, as applicable, shall be provided (i) when prescribed by a physician or (ii) when necessary to observe the established religious dietary practices of the resident. In such circumstances, the meals shall meet the minimum nutritional requirements of the U.S. Dietary Guidelines.

C. Menus of actual meals served shall be kept on file for at least six months.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the facility administrator approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Food shall be made available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

6VAC35-101-750. Reading materials.

A. Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents.

B. Written procedure shall be developed and implemented governing resident access to publications.

6VAC35-101-760. Religion.

A. Residents shall not be required or coerced to participate in or unreasonably denied participation in religious activities.

B. Procedures on religious participation shall be available to residents.

6VAC35-101-770. Recreation.

A. The detention center shall have a written description of its recreation program that describes activities that are consistent with the detention center's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Opportunity for large muscle exercise daily;

3. Scheduling so that activities do not conflict with meals, religious services, educational programs, or other regular events;

4. Provision of a variety of equipment for each indoor and outdoor recreation period; and

5. Regularly scheduled indoor and outdoor recreational activities. Outdoor recreation will be available whenever practicable in accordance with the facility's recreation program. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. The recreational program shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in water-related and swimming activities.

6VAC35-101-780. Residents' funds.

A. The facility shall develop and implement written procedures for safekeeping and for recordkeeping of any money that belongs to residents.

B. Residents' funds shall be used only (i) for their benefit; (ii) for payment of any fines, restitution, costs, or support ordered by a court; or (iii) to pay restitution for damaged property or personal injury as determined by disciplinary process.

6VAC35-101-790. Fundraising.

Residents shall not be used in fundraising activities without the written permission of the legal guardian and the consent of residents.

Part VI
Program Operation

Article 1
Admission, Transfer, and Release

6VAC35-101-800. Admission and orientation.

A. Written procedure governing the admission and orientation of residents shall provide for:

1. Verification of legal authority for placement;

2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and required by 6VAC35-101-800 (admission and orientation) and 6VAC35-101-810 (residents' personal possessions);

3. Health screening as required by 6VAC35-101-980 (health screening at admission);

4. Mental health screening as required by 6VAC35-101-820 (mental health screening);

5. Notification of parent or legal guardian of admission;

6. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;

7. Interview with resident to answer questions and obtain information; and

8. Explanation to resident of program services and schedules.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by 6VAC35-101-1070 (behavior management);

a. During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.

b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.

2. The grievance procedure as required by 6VAC35-101-100 (grievance procedure);

3. The disciplinary process as required by 6VAC35-101-1080 (disciplinary process); and

4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-101-510 (emergency and evacuation procedures).

C. Such orientation shall occur prior to assignment of the resident to a housing unit or room.

6VAC35-101-810. Residents' personal possessions.

A. Residents' personal possessions shall be inventoried upon admission and such inventory shall be documented in the resident's case record. When a resident arrives at a facility with items not permitted in the detention center, staff shall:

1. Dispose of contraband items in accordance with written procedures; and

2. If the items are nonperishable property that the resident may otherwise legally possess, securely store the property and return it to the resident upon release.

B. Each detention center shall implement a written procedure regarding the disposition of personal property unclaimed by residents after release from the facility.

6VAC35-101-820. Mental health screening.

A. Each resident shall undergo a mental health screening as required by § 16.1-248.2 of the Code of Virginia to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and

2. The administration of an objective mental health screening instrument within 48 hours of admission.

B. If the mental health screening indicates that a mental health assessment is needed, it shall take place within 24 hours of such determination as required in § 16.1-248.2 of the Code of Virginia.

6VAC35-101-830. Classification plan.

Residents shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration detention center design, staffing levels, and the behavior and characteristics of individual residents.

6VAC35-101-840. Discharge.

A. Residents shall be released only in accordance with written procedure.

B. Each resident's record shall contain a copy of the documentation authorizing the resident's discharge.

C. Residents shall be discharged only to the legal guardian or legally authorized representative.

D. As applicable and appropriate, information concerning current medications shall be provided to the legal guardian or legally authorized representative.

Article 2
Programs and Services

6VAC35-101-850. Operational procedures.

The current program or operating procedure manual shall be readily accessible to all staff.

6VAC35-101-860. Structured programming.

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision, designed to:

1. Meet the residents' physical, emotional, and educational needs;

2. Provide protection, guidance, and supervision;

3. Ensure the delivery of program services; and

4. Meet the objectives of any individual service plan.

B. The structured daily routine shall be followed for all weekday and weekend programs and activities. Deviations from the schedule shall be documented.

6VAC35-101-870. Written communication between staff; daily log.

A. Procedures shall be implemented providing for the written means of communication between staff, such as the use of daily logs. This means of communication shall be maintained to inform staff of significant happenings or problems experienced by residents, such as any resident medical or dental complaints or injuries.

B. The date and time of the entry and the identity of the individual making each entry shall be recorded.

C. If the means of communication between staff is electronic, all entries shall post the date, time, and name of the person making an entry. The computer shall prevent previous entries from being overwritten.

Article 3
Supervision

6VAC35-101-880. Additional assignments of direct care staff.

A. Direct care staff and staff responsible for the direct supervision of residents may assume the duties of nondirect care personnel only when these duties do not interfere with their direct care or direct supervision responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

6VAC35-101-890. Staff supervision of residents.

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty and responsible for the direct care of residents for more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, rest day shall mean a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the operation of a detention center. Such duties shall include participation in any training that is required by (i) this chapter, (ii) the employee's job duties, or (iii) the employee's supervisor.

C. Direct care staff shall have an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours except in an emergency.

E. When both males and females are housed in the same living unit at least one male and one female staff member shall be actively supervising at all times.

F. Staff shall always be in plain view of another staff person when entering an area occupied by residents of the opposite sex.

G. Staff shall regulate the movement of residents within the detention center in accordance with written procedures.

H. Written procedures shall be implemented governing the transportation of residents outside the detention center and from one jurisdiction to another.

6VAC35-101-900. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, detention center sponsored activities.

B. During the hours that residents are scheduled to sleep there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping.

D. At all times, there shall be no less than one direct care staff member with current certifications in standard first aid and cardiopulmonary resuscitation on duty for every 16 residents, or portion thereof, being supervised by staff.

6VAC35-101-910. Outside personnel working in the detention center.

A. Detention center staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents in the detention center.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Article 4
Work Programs

6VAC35-101-920. Work and employment.

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. In both work assignments and employment the facility administrator or designee shall evaluate the appropriateness of the work and the fairness of the pay.

Part VII
Health Care Services

6VAC35-101-930. Health authority.

The facility administrator shall designate a physician, nurse, nurse practitioner, government authority, health administrator, health care contractor, or health agency to serve as the facility's health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, consistent with applicable statutes and regulations, prevailing community standards, and medical ethics.

6VAC35-101-940. Provision of health care services.

Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other health-trained personnel shall provide care within their level of training and certification.

6VAC35-101-950. Health care procedures.

A. Written procedures shall be developed and implemented for:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of on-going and follow-up medical and dental services after admission;

3. Providing or arranging for the provision of dental services for residents who present with acute dental concerns;

4. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;

5. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

6. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified; and

3. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

6VAC35-101-960. Health-trained personnel.

A. Health-trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health-trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-101-970. Consent to and refusal of health care services.

A. Health care services, as defined in 6VAC35-101-10 (definitions), shall be provided in accordance with § 54.1-2969 of the Code of Virginia. The knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free choice (informed consent) to health care shall be obtained from the resident or parent or legal custodian, as required by law.

B. The resident and parent or legal guardian, as appropriate and applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure and (ii) the alternatives to it.

C. Residents may refuse in writing medical treatment and care. Facilities shall have written procedures for:

1. Explaining the implications of refusals; and

2. Documenting the reason for the refusal.

This subsection does not apply to medication refusals that are governed by 6VAC35-101-1060 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-101-980. Health screening at admission.

A. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care

personnel or health-trained personnel, as defined in 6VAC35-101-10 (definitions), using a health screening form that has been approved by the health authority.

B. Residents admitted who pose a health or safety threat to themselves or others shall be separated from the detention center's general population but provision shall be made for them to receive comparable services.

C. Immediate health care is provided to residents who need it.

6VAC35-101-990. Tuberculosis screening.

A. Within five days of admission to the facility each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall comply with current guidelines and recommendations of the Virginia Department of Health, Division of Tuberculosis Prevention and Control for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

6VAC35-101-1000. Residents' medical examination; responsibility for preexisting conditions.

A. Within five days of admission, all residents who are not directly transferred from another detention center shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. A full medical examination is not required if there is documented evidence of a complete health examination within the previous 90 days; in such cases, a physician or qualified health care practitioner shall review the resident's health record and update as necessary.

B. A detention center shall not accept financial responsibility for preexisting medical, dental, psychological, or psychiatric conditions, except on an emergency basis.

6VAC35-101-1010. Infectious or communicable diseases.

A. A resident with a communicable disease shall not be housed in the general population unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

B. The facility shall implement written procedures approved by a medical professional that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter; and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

6VAC35-101-1020. Suicide prevention.

Written procedure shall provide for (i) a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care staff to be trained and retrained in the implementation of the program.

6VAC35-101-1030. Residents' health care records.

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

B. The resident's active health records (i) shall be kept confidential and inaccessible from unauthorized persons, (ii) shall be readily accessible in case of emergency, and (iii) shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease, including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

D. Each resident's health record shall include:

1. Notations of health and dental complaints and injuries and a summary of the residents symptoms and the treatment given; and

2. A copy of the information required in subsection B of 6VAC35-101-950 (health care procedures).

6VAC35-101-1040. First aid kits.

A. A well stocked first aid kit shall be maintained and readily accessible for dealing with minor injuries and medical emergencies.

B. First aid kits should be monitored in accordance with established facility procedures to ensure kits are maintained, stocked, and ready for use.

6VAC35-101-1050. Hospitalization and other outside medical treatment of residents.

A. When a resident needs hospital care or other medical treatment outside the detention center:

1. The resident shall be transported safely; and

2. A staff member or a law-enforcement officer, as appropriate, shall accompany the resident until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under The Psychiatric Inpatient Treatment of Minors Act (§ 16.1-355 et seq. of the Code of Virginia).

B. In accordance with applicable laws and regulations, the parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

6VAC35-101-1060. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except (i) as required by 6VAC35-101-1250 (delivery of medication in postdispositional programs) or (ii) if otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication as stated in 6VAC35-101-190 (required initial training). Such staff members shall undergo an annual refresher training as stated in 6VAC35-101-200 (retraining).

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders issued by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. A medication incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a health care professional. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals which shall address:

1. Manner by which medication refusals are documented; and

2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

Part VIII
Behavior Management

6VAC35-101-1070. Behavior management.

A. A behavior management program shall be implemented. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations and the residents' and employees' safety and security.

B. Written procedures governing this program shall provide the following:

1. A listing of the rules of conduct and behavioral expectations for the resident;

2. Orientation of residents as required by 6VAC35-101-800 (admission and orientation);

3. The definition and listing of a system of privileges and sanctions that is used and available for use. Sanctions (i) shall be listed in the order of their relative degree of restrictiveness; (ii) may include a "cooling off" period where a resident is placed in a room for no more than 60 minutes; and (iii) shall contain alternatives to room confinement;

4. The specification of the staff members who may authorize the use of each privilege and sanction;

5. Documentation requirements when privileges are applied and sanctions are imposed;

6. The specification of the processes for implementing such procedures; and

7. Means of documenting and monitoring of the program's implementation including, but not limited to, an on-going administrative review of the implementation to ensure conformity with the procedures.

C. When substantive revisions are made to the behavior management program, written information concerning the revisions shall be provided to the residents and direct care staff shall be oriented on the changes prior to implementation.

D. The facility administrator shall review the detention center's behavior intervention techniques and procedures at least annually to determine appropriateness for the population served.

6VAC35-101-1080. Disciplinary process.

A. Procedures. Written procedures shall govern the disciplinary process that shall contain the following:

1. Graduated sanctions and progressive discipline;

2. Training on the disciplinary process and rules of conduct; and

3. Documentation on the administration of privileges and sanctions as provided in the behavior management program.

B. Disciplinary report. A disciplinary report shall be completed when it is alleged that a resident has violated a rule of conduct for which room confinement, including a bedtime earlier than that provided on the daily schedule, may be imposed as a sanction.

1. All disciplinary reports shall contain the following:

a. A description of the alleged rule violation, including the date, time, and location;

b. A listing of any staff present at the time of the alleged rule violation;

c. The signature of the resident and the staff who completed the report; and

d. The sanctions, if any, imposed.

2. A disciplinary report shall not be required when a resident is placed in his room for a "cooling off" period, in accordance with written procedures, that does not exceed 60 minutes.

C. Review of rule violation. A review of the disciplinary report shall be conducted by an impartial person. After the resident receives notification of the alleged rule violation, the resident shall be provided with the opportunity to admit or deny the charge.

1. The resident may admit the charge, in writing, and accept the sanction (i) prescribed for the offense or (ii) as amended by the impartial person.

2. The resident may deny the charge and the impartial person shall:

a. Meet in person with the resident;

b. Review the allegation with the resident;

c. Provide the resident with the opportunity to present evidence, including witnesses;

d. Provide, upon the request of the resident, for an impartial staff member to assist the resident in the conduct of the review;

e. Render a decision and inform the resident of the decision and rationale supporting this decision;

f. Complete the review within 12 hours of the time of the alleged rule violation, including weekends and holidays, unless the time frame ends during the resident's scheduled sleeping hours. In such circumstances, the delay shall be documented and the review shall be conducted within the same time frame thereafter;

g. Document the review, including any statement of the resident, evidence, witness testimony, the decision, and the rationale for the decision; and

h. Advise the resident of the right to appeal the decision.

D. Appeal. The resident shall have the right to appeal the decision of the impartial person.

1. The resident's claim shall be reviewed by the facility administrator or designee and shall be decided within 24 hours of the alleged rule violation, including weekends and holidays, unless the time frame ends during the resident's scheduled sleeping hours. In such circumstances, the delay shall be documented and the review shall be conducted within the same time frame thereafter. The review by the facility administrator may be conducted via electronic means.

2. The resident shall be notified in writing of the results immediately thereafter.

E. Report retention. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the case record. If a resident is found not guilty of the alleged rule violation, the disciplinary report shall be removed from the resident's case record and shall be maintained as required by 6VAC35-101-330 (maintenance of residents' records).

6VAC35-101-1090. Physical restraint.

A. Physical restraint shall be used as a last resort only after less restrictive interventions have failed or to control residents whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force deemed reasonable to be necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with the intent to inflict injury.

2. Staff may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.

3. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Written procedures shall govern the use of physical restraint and shall include:

1. The staff position who will write the report and time frame;

2. The staff position who will review the report and time frame;

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; and

4. An administrative review of the use of physical restraints to ensure conformity with the procedures.

C. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;

2. Staff involved;

3. Justification for the restraint;

4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;

5. Duration;

6. Description of method or methods of physical restraint techniques used;

7. Signature of the person completing the report and date; and

8. Reviewer's signature and date.

6VAC35-101-1100. Room confinement and isolation.

A. Written procedures shall govern how and when residents may be confined to a locked room for both segregation and isolation purposes.

B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and

more often if indicated by the circumstances. Staff shall conduct a check at least every 15 minutes in accordance with approved procedures when the resident is on suicide watch.

C. Residents who are confined to a room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be documented.

D. If a resident is confined to his room for any reason for more than 24 hours, the facility administrator or designee shall be notified.

E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) steps being taken or planned to resolve the situation shall be immediately reported to the director or designee. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.

F. Room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider.

G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.

H. The facility administrator or designee shall make personal contact with each resident who is confined to a locked room, including being placed in isolation, each day of confinement.

I. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, and (v) writing.

6VAC35-101-1110. Administrative confinement.

A. Residents shall be placed in administrative confinement only by the facility administrator or designee. The reason for such placement shall be documented in the resident's case record.

B. Residents who are placed in administrative confinement shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.

C. Residents who are placed in administrative confinement shall be afforded basic living conditions approximating those available to the facility's general population and, as provided for in approved procedures, shall be afforded privileges similar to those of the general population. Exceptions may be made in accordance with established procedures when justified by clear and substantiated evidence. If residents who are placed in administrative confinement are confined to a room or placed in isolation, the provisions of 6VAC35-101-1100 (room confinement and isolation) and 6VAC35-1140 (monitoring restrained residents) apply, as applicable.

D. Administrative confinement means the placement of a resident in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or for other residents for reasons of health or safety.

6VAC35-101-1120. Chemical agents.

Staff are prohibited from using pepper spray and other chemical agents to manage resident behavior or maintain institutional security.

6VAC35-101-1130. Mechanical restraints.

A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;

2. That the facility administrator or designee shall be notified immediately upon using restraints in an emergency situation;

3. That restraints shall never be applied as punishment or a sanction;

4. That residents shall not be restrained to a fixed object or restrained in an unnatural position;

5. That each use of mechanical restraints, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case file or in a central log book; and

6. That a written record of routine and emergency distribution of restraint equipment be maintained.

B. Written procedure shall provide that (i) all staff who are authorized to use restraints shall receive training in such use, including how to check the resident's circulation and how to check for injuries and (ii) only trained staff shall use restraints.

6VAC35-101-1140. Monitoring restrained residents.

A. Written procedure shall provide that when a resident is placed in restraints, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. Make a direct personal check on the resident at least every 15 minutes and more often if the resident's behavior warrants.

B. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall immediately consult with a mental health professional. This consultation shall be documented.

C. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, (i) staff shall immediately consult with and document that they have consulted with a mental health professional and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. Any such protocols shall be in compliance with the procedures required by 6VAC35-101-1150 (restraints for medical and mental health purposes).

6VAC35-101-1150. Restraints for medical and mental health purposes.

Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure shall identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.

Part IX
Postdispositional Detention Programs

6VAC35-101-1160. Approval of postdispositional detention programs.

A detention center that accepts placements in a postdispositional detention program, as defined herein, must be approved by the board to operate a postdispositional detention program. The certificate issued by the board shall state that the detention center is approved to operate a postdispositional detention program and the maximum number of residents that may be included in the postdispositional detention program. The board will base its approval of the postdispositional detention program on the program's compliance with provisions of 6VAC35-101-1160 (approval of postdispositional detention programs) through 6VAC35-101-1270 (release from a postdispositional detention program).

6VAC35-101-1170. Agreement with court service unit.

The postdispositional detention program shall request a written agreement with the court service unit of the committing court defining working relationships and responsibilities in the implementation and utilization of the postdispositional detention program.

6VAC35-101-1180. Placements in postdispositional detention programs.

A. A detention center that accepts placements in a postdispositional detention program shall have written procedure ensuring reasonable utilization of the detention center for both predispositional detention and the postdispositional detention program. This procedure shall provide for a process to ensure that the postdispositional detention program does not cause the detention center to exceed its rated capacity.

B. When a court orders a resident detained in a postdispositional detention program, the detention center shall:

1. Obtain from the court service unit a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and

2. Develop a written plan with the court service unit within five business days to enable such residents to take part in one or more locally available treatment programs appropriate for their rehabilitation that may be provided in the community or at the detention center.

C. When a detention center accepts placements in a postdispositional detention program, the detention center shall:

1. Provide programs or services for the residents in the postdispositional detention program that are not routinely available to predispositionally detained residents. This requirement shall not prohibit residents in the postdispositional detention program from participating in predispositional services or any other available programs; and

2. Establish a schedule clearly identifying the times and locations of programs and services available to residents in the postdispositional detention program.

D. Upon the receipt of (i) a referral of the probation officer of a potential resident who meets the prerequisite criteria for placement provided in § 16.1-284.1 of the Code of Virginia or (ii) an order of the court, the detention center shall conduct the statutorily required assessment as to whether a resident is an appropriate candidate for placement in a postdispositional detention program. The assessment shall assess the resident's need for services using a process that is outlined in writing, approved by the department, and agreed to by both the facility administrator and the director of the court service unit. Based on these identified needs, the assessment shall indicate the appropriateness of the postdispositional detention program for the resident's rehabilitation.

E. When programs or services are not available in the detention center, a resident in a postdispositional detention program may be considered for temporary release from the detention center to access such programs or services in the community.

1. Prior to any such temporary release, both the detention center and the court service unit shall agree in writing as to

the suitability of the resident to be temporarily released for this purpose.

2. Residents who present a significant risk to themselves or others shall not be considered suitable candidates for participation in programs or services outside the detention center or for paid employment outside the detention center. Such residents may participate in programs or services within the detention center, as applicable, appropriate, and available.

6VAC35-101-1190. Program description.

The postdispositional detention program shall have a written statement of its:

1. Purpose and philosophy;

2. Treatment objectives;

3. Criteria and requirements for accepting residents;

4. Criteria for measuring a resident's progress;

5. General rules of conduct and the behavior management program, with specific expectations for behavior and appropriate sanctions;

6. Criteria and procedures for terminating services, including terminations prior to the resident's successful completion of the program;

7. Methods and criteria for evaluating program effectiveness; and

8. Provisions for appropriate custody, supervision, and security when programs or services are delivered outside the detention center.

6VAC35-101-1200. Individual service plans in postdispositional detention programs.

A. A written plan of action, the individual service plan, shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. The individual service plan shall:

1. Be revised as necessary and reviewed at intervals; and

2. Specify (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives, and strategies established for the resident;

4. Projected family involvement; and

5. Projected date for accomplishing each objective.

C. Each service plan shall include the date it was developed and the signature of the person who developed it.

D. The resident and facility staff shall participate in the development of the individual service plan.

E. The (i) supervising agency and (ii) resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

F. The initial individual service plan shall be distributed to the resident, the resident's parents or legal guardian as appropriate and applicable, and the applicable court service unit.

G. Staff responsible for daily implementation of the resident's individual service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

6VAC35-101-1210. Progress reports in postdispositional detention programs.

A. There shall be a documented review of each resident's progress in accordance with § 16.1-284.1 of the Code of Virginia. The review shall report the:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement; and

3. Continuing needs of the resident.

B. Each progress report shall include (i) the date it was developed and (ii) the signature of the person who developed it.

6VAC35-101-1220. Case management services in postdispositional detention programs.

A. The facility shall implement written procedures governing case management services that shall address:

1. The resident's adjustment to the facility, group living, and separation from the resident's family;

2. Supportive counseling, as needed;

3. Transition and community reintegration planning and preparation; and

4. Communicating with (i) staff at the facility, (ii) the parents or legal guardians, as appropriate and applicable, (iii) the court service unit, and (iv) community resources, as needed.

B. The provision of case management services shall be documented in the case record.

6VAC35-101-1230. Residents' health care records in postdispositional detention programs.

A. In addition to the requirements of 6VAC35-101-1030 (residents' health care records), each resident's health record shall include or document all efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

B. In addition to the information required by 6VAC35-101-950 (health care procedures), the following information shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Medical insurance company name and policy number or Medicaid number; and

2. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

6VAC35-101-1240. Services by licensed professionals in postdispositional detention programs.

When a postdispositional detention program refers a resident to a licensed professional in private practice, the program shall check with the appropriate licensing authority's Internet web page or by other appropriate means to verify that the individual is appropriately licensed.

6VAC35-101-1250. Delivery of medication in postdispositional detention programs.

A detention center that accepts postdispositional placements exceeding 30 consecutive days pursuant to § 16.1-284 of the Code of Virginia shall have and follow written procedures, approved by its health authority, that either permits or prohibits self-medication by postdispositional residents. The procedures may distinguish between residents who receive postdispositional services entirely within the confines of the detention center and those who receive any postdispositional services outside the detention center. The procedures shall conform to the specific requirements of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

6VAC35-101-1260. Residents' paid employment in postdispositional detention programs.

A. Paid employment may be part of the rehabilitation and treatment plan for a postdispositional resident. Such work must be in a setting that the facility administrator has determined to be appropriate.

B. Paid employment for any resident participating in a postdispositional detention program must be in accordance with 6VAC35-101-920 (work and employment).

6VAC35-101-1270. Release from a postdispositional detention program.

In addition to the requirements in 6VAC35-101-840 (discharge), information concerning the resident's need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate, at the time of the resident's discharge from the facility.

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 (6VAC35-101)

Health Services Intake Medical Screening, HS 1/10.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-101)

Screening for TB Infection and Disease, Policy TB 99-001 (www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Policies/screening.htm), Virginia Department of Health.

Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC, Morbidity and Mortality Weekly Report, July 7, 2006, Vol. 55, No. RR-9 (http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5509a1.htm), Department of Health and Human Services, Centers for Disease Control and Prevention.

A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.

Guidelines for Transporting Juveniles in Detention, Revised September 8, 2004, Virginia Department of Juvenile Justice.

VA.R. Doc. No. R09-1816; Filed January 11, 2010, 2:24 p.m.

FORENSIC SCIENCE BOARD

Withdrawal of Proposed Regulation

Title of Regulation: **6VAC40-60. DNA Data Bank Regulations (adding 6VAC40-60-10 through 6VAC40-60-80).**

Statutory Authority: § 19.2-310.5 of the Code of Virginia.

The Forensic Science Board has WITHDRAWN the proposed regulation entitled, **6VAC40-60, DNA Data Bank Regulations**, which was published in 25:6 VA.R. 1215-1218 November 24, 2008. On January 6, 2010, the board voted to withdraw this regulation, which will be redrafted and presented for the board's consideration on May 12, 2010.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street,

Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email stephanie.merritt@dfs.virginia.gov.

VA.R. Doc. No. R07-739; Filed January 14, 2010, 1:28 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Title of Regulation: **8VAC20-40. Regulations Governing Educational Services for Gifted Students (amending 8VAC20-40-10, 8VAC20-40-20, 8VAC20-40-40, 8VAC20-40-60; adding 8VAC20-40-55; repealing 8VAC20-40-30, 8VAC20-40-50, 8VAC20-40-70).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Effective Date: March 4, 2010.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Summary:

The amendments (i) require that school divisions with identification in general intellectual aptitude provide service options "continuously and sequentially" from kindergarten through twelfth grade; (ii) stipulate that identification in a specific academic aptitude area may occur as assessment instruments exist to support identification; (iii) require that school divisions that elect to identify students in one or more specific academic aptitude areas shall provide continuous and sequential service options through twelfth grade; (iv) require that school divisions post their plan for the education of gifted students on their websites and have printed copies of the plan available for citizens who do not have online access; (v) require that the identification and placement committee determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision within 90 instructional days of the receipt of a parent's or legal guardian's consent for assessment; (vi) require that requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 instructional days of receipt of notification of the action by the division; (vii) reduce the minimum number of criteria used for the identification of gifted students from four to three; (viii) require that school divisions must assure that the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases; (ix) explicitly state that specific academic aptitude areas include English, history and social science, mathematics, or science; (x) require that school divisions provide professional development for instructional personnel who deliver services within the gifted education program based on the competencies specified for the gifted education add-on endorsement; (xi) require that each school board approve a comprehensive plan for the education of gifted students that includes the components identified in the regulations; (xii) require that each school board submit a comprehensive plan for the education of gifted students to the Department of Education for technical review on a schedule determined by the department; and (xiii) clarify that current funding for the education of gifted students is governed by the appropriation act.

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~~
~~Applicability and Definitions~~

8VAC20-40-10. Applicability.

This chapter shall apply to all local school divisions in the Commonwealth, regarding their [gifted education] services for students from kindergarten through [~~high school graduation~~ twelfth grade].

8VAC20-40-20. Definitions.

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

"Appropriately differentiated ~~curricula" for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula provide emphasis on both accelerative and enrichment opportunities for~~ curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of [~~eligible or~~] identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction~~,~~; (ii) original research or production~~,~~; (iii) problem finding and solving~~,~~; (iv) higher level thinking that leads to the generation of products~~,~~; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers.

"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program.

"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through [~~graduation~~ twelfth grade] ~~whose abilities~~ who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated ~~abilities and who have evidence of high performance capabilities, which may include leadership,~~ aptitudes in one or more of the following areas:

1. ~~Intellectual~~ General intellectual aptitude ~~or aptitudes~~. ~~Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

2. Specific academic aptitude. ~~Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, mathematics, [~~and~~ or] science.

3. ~~Technical and practical arts~~ Career and technical aptitude. ~~Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced use of [technical] language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in career and technical fields.

4. Visual or performing arts aptitude. ~~Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.~~ Such students demonstrate or have the potential to demonstrate superior creative reasoning and imaginative expression; persistent artistic curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and principles beyond their age-level peers in visual or performing arts.

"Identification" ~~is~~ means the multistaged process of ~~reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.~~ finding students who are eligible for [service options offered through] the division's gifted education program. The identification process begins with a divisionwide screening component that is followed by a referral component, and that concludes with the determination of eligibility by the school division's identification and placement committee [or committees]. The identification process includes the review of valid and reliable student data based on criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program.

~~"Identification/Placement Committee"~~ "Identification and placement committee" means ~~a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.~~ the building-level or division-level committee that shall determine a student's eligibility for the division's gifted education program, based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student.

"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem-solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.

"Placement" means the determination of the appropriate educational ~~option~~ options for each eligible student.

"Referral" means the formal and direct process that parents [or legal guardians], teachers, professionals, [~~or~~] students [, peers, self, or others] use to request that a kindergarten through twelfth-grade student be assessed for gifted education program services.

"Screening" ~~is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification~~ means the [~~divisionwide search each school division conducts at least once annually across all its students to determine which students should be referred for identification and service in the gifted education program. The annual screening shall, at a minimum, consist of a review of current assessment data for all kindergarten through twelfth grade students. Students selected through the school division's screening process are then referred for formal identification~~ annual process of creating a pool for candidates from kindergarten through twelfth grade using multiple criteria through the referral process, the review of current assessment data, or other information from other sources. Screening is the active search for students who are then referred for the formal identification process].

"Service options" ~~include~~ means the instructional ~~approach or~~ approaches, ~~setting or~~ settings, and staffing selected for the delivery of appropriate ~~service or services that are based on student needs~~ [~~programs~~ service or services] provided to eligible students based on their assessed needs in their areas of strength.

"Student outcomes" ~~are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners~~ means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians.

~~Part II~~
~~Responsibilities of the Local School Divisions~~

8VAC20-40-30. ~~Applicability.~~ (Repealed.)

~~The requirements set forth in this part are applicable to local school divisions providing educational services for gifted students in elementary and secondary schools from kindergarten through graduation.~~

8VAC20-40-40. ~~Identification~~ Screening, referral, identification, and [~~placement~~ service].

A. Each school division shall establish ~~a~~ uniform ~~procedure with common criteria~~ procedures for screening, [~~referral, and identification of~~ referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in] general intellectual or specific academic aptitude [~~gifted students~~]. If the school division elects to identify students [~~with specific academic aptitudes~~ in general intellectual aptitude], ~~they~~ it shall [~~include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science,~~] ~~and humanities~~ [provide service options from kindergarten through twelfth grade]. ~~These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self referral of those students believed to be gifted. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.~~ [Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected academic aptitude areas, it shall provide service options through twelfth grade.] School divisions may identify and serve gifted students in career and technical aptitude or visual [~~and~~ or] performing arts aptitude, or both, at their discretion.

B. ~~Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.~~ These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the [designated] identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude test data.

C. These uniform procedures shall permit referrals from [~~school personnel,~~] parents or legal guardians, [~~or other persons of related expertise, as well as peer or self referral~~ teachers, professionals, students, peers, self, or others]. Such referrals shall be accepted for kindergarten through twelfth-grade students.

D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. [The committee shall consider input from a professional who knows the child.] The committee shall include [~~a professional who knows the child, as well as~~] classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used

consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously.

1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with superior aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement, as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem-solving aptitudes.

2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education [~~program~~ services]. Students who are found eligible by the identification and placement committee shall be offered [~~programs or courses~~ service options] with appropriately differentiated curriculum and instruction by the school division.

3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:

a. Assessment of appropriate student products, performance, or portfolio;

b. Record of observation of in-classroom behavior;

c. Appropriate rating scales, checklists, or questionnaires;

d. Individual interview;

e. Individually administered or group-administered, [nationally] norm-referenced aptitude [or achievement] tests;

f. Record of previous accomplishments (such as awards, honors, grades, etc.); or

g. Additional valid and reliable measures or procedures.

4. If a program is designed to address general intellectual aptitude [~~or specific academic aptitude~~], an individually administered or group-administered, [nationally] norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure.

5. If a program is designed to address [~~either the visual and performing arts or career and technical~~ specific academic] aptitude, [~~a portfolio or other performance assessment measure in the specific aptitude area shall be included as part of the data reviewed by the identification and placement committee~~ an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures].

[6. If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as a part of the data reviewed by the identification and placement committee.]

E. Within [~~60 business~~ 90 instructional] days [~~of~~, beginning with] the receipt of a [~~referral~~ parent's or legal guardian's consent for assessment], the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in [~~a classroom or program~~ an instructional] setting that provides:

1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and

2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

8VAC20-40-50. ~~Criteria for screening and identification.~~ (Repealed.)

~~Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:~~

~~1. Assessment of appropriate student products, performance, or portfolio;~~

~~2. Record of observation of in-classroom behavior;~~

~~3. Appropriate rating scales, checklists, or questionnaires;~~

~~4. Individual interview;~~

~~5. Individual or group aptitude tests;~~

~~6. Individual or group achievement tests;~~

~~7. Record of previous accomplishments (such as awards, honors, grades, etc.);~~

~~8. Additional valid and reliable measures or procedures.~~

~~If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.~~

8VAC20-40-55. Parental rights for notification, consent, and appeal.

A. School divisions shall provide written notification to and seek written consent from parents and legal guardians to:

1. Conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program;

2. Announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and

3. Provide services for an identified gifted student in the school division's gifted education program.

B. Each school division shall adopt a review procedure for students whose cases are appealed. This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee, and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 [~~business~~ instructional] days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.

1. A parent or legal guardian of a student who was referred but not identified by the identification and placement committee as eligible for services in the school division's gifted education program shall be informed, in writing, within 10 [~~business~~ instructional] days, of the school division's process to appeal the committee's decision.

2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program.

C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall apprise school administrators of each student's eligibility status.

8VAC20-40-60. Local plan, local advisory committee, and annual report.

A. [Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education (DOE) for technical review on a schedule determined by the department.] Each school ~~division~~ board shall ~~submit to the Department of Education for approval a~~ [~~review and~~] approve [~~annually~~] a comprehensive plan for the education of gifted students that includes the components identified in these regulations. ~~Modifications to the plan shall be reported to the Department of Education on dates specified by the department.~~ The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved local plan shall be accessible through the school division's website and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access. The plan shall include the following components ~~as follow~~:

1. A statement of philosophy for the gifted education program;

2. A statement of the school division's gifted education program goals and objectives for identification, delivery of services, curriculum and instruction, [~~personnel preparation~~ professional development], and parent and community involvement;

3. Procedures for the early and on-going screening, referral, identification and placement of gifted students~~;~~, beginning with kindergarten through ~~secondary graduation~~ twelfth-grade in at least ~~one of the four defined areas of giftedness;~~ a general intellectual or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual [~~and~~ or] performing arts or career and technical aptitude programs;

4. A procedure for ~~notifying~~ written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of ~~students~~ a gifted student in the appropriate ~~program~~ service options;

5. A policy for ~~notifying gifted students' change of placement within, and~~ written notification to parents or legal guardians of identification and placement decisions, including initial changes in placement or exit from the program~~, which includes an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an~~

~~appropriate administrator~~. Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal;

6. Assurances that student records are maintained ~~according to 8VAC20-150-10 et seq., Management of Student's Scholastic Record in the Public Schools of Virginia~~ in compliance with applicable state and federal privacy laws and regulations;

7. Assurances that (i) [~~testing and evaluation assessment materials selected and administered are sensitive to~~ free of the selected and administered testing and assessment materials have been evaluated by the developers for] cultural, racial, and linguistic ~~differences,~~ biases; (ii) identification procedures are constructed so that ~~they~~ those procedures may identify ~~high potential/ability in all underserved culturally diverse, low socio-economic, and disabled populations,~~ high potential or aptitude in any student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability; (iii) standardized tests and other measures have been validated for the ~~specific purpose for which they are used~~ purpose of identifying gifted students; and (iv) instruments are administered and interpreted by a trained personnel in conformity with the developer's instructions ~~of their producer~~;

~~8. A procedure to identify and evaluate student outcomes based on the initial and ongoing assessment of their cognitive and affective needs;~~

~~9. A procedure to match service options, including instructional approaches, settings, and staffing, to designated student needs;~~

~~10. A framework for appropriately differentiated curricula indicating accelerative and enrichment opportunities in content, process, and product;~~

~~11. Procedures for the selection/evaluation of teachers and for the training of personnel to include administrators/supervisors, teachers, and support staff;~~

~~12. Procedures for the appropriate evaluation of the effectiveness of the school division's program for gifted students; and~~

~~13. Other information as required by the Department of Education.~~

8. Assurances that accommodations or modifications determined by the school division's special education Individualized Education Program (IEP) team, as required for the student to receive a free appropriate public education, shall be incorporated into the student's gifted education services;

9. Assurances that a written copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request;

10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week to (i) work with their age-level peers, (ii) work with their intellectual and academic peers, (iii) work independently [~~;~~] and (iv) foster intellectual and academic growth of gifted students. Parents and legal guardians shall receive assessment of each gifted student's [~~intellectual and~~] academic growth;

11. A description of the school division's program of differentiated curriculum and instruction demonstrating accelerated and advanced content [~~within programs or courses~~];

12. [~~Polices~~ Policies] and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs;

13. Evidence that school divisions provide professional development based on the competencies specified in 8VAC20-542-310, Gifted education (add-on endorsement), for instructional personnel who deliver services within the gifted education program; and

14. Procedures for the annual [~~evaluation~~ review] of the effectiveness of the school division's gifted education program, including review of student outcomes and the [~~intellectual and~~] academic growth of gifted students. Such [~~evaluations~~ review] shall be based on multiple criteria and shall include multiple sources of information [~~for gifted students~~].

B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. ~~The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the~~ This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions, and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing ~~through~~ to the division superintendent ~~to~~ and the school board.

C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the department.

8VAC20-40-70. [Funding. ~~(Repealed.)~~]

~~State funds administered by the Department of Education for the education of gifted students shall be used to support only those activities identified in the school division's plan as approved by the Board of Education.~~ [Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the appropriation act.]

VA.R. Doc. No. R07-94; Filed January 12, 2010, 11:02 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-240, 9VAC5-50-250, 9VAC5-50-260).**

9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-1100, 9VAC5-80-1110, 9VAC5-80-1120, 9VAC5-80-1140 through 9VAC5-80-1220, 9VAC5-80-1240 through 9VAC5-80-1300; adding 9VAC5-80-1105, 9VAC5-80-1255; repealing 9VAC5-80-1320).

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70, and 72.

Public Hearing Information:

April 14, 2010 - 10 a.m. - Department of Environmental Quality, 629 East Main Street, Second Floor Conference Room, Richmond, VA

Public Comment Deadline: May 3, 2010.

Agency Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, or email gegraham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Federal Requirements:

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to the federal Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) Establish a program for the enforcement of the emission limitations and schedules for compliance; and

(3) Establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these, will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures, or installations that will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures, or installations must submit information on the nature and amounts of emissions and on the location, construction, and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The

procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

(1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

(2) enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under § 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

State Requirements:

Section 10.1-1322.4 of the Code of Virginia provides an exemption (unless required by federal law or regulation) from permit requirements for the use of an alternative fuel or raw material, if the owner demonstrates to the board that, as a result of trial burns at the facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. The Code further provides (to the extent allowed by federal law or regulation) that no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

Purpose: The purpose of the regulation is to protect public health, safety, and welfare by establishing the procedural and legal basis for the issuance of new source permits for a proposed new stationary source or a project at an existing one that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) assess the impact of the emissions from the source on air quality, and (iii) provide a state and federally enforceable mechanism to enforce permit program requirements. The proposed amendments are being made to simplify the program requirements and reduce the complexity of the permit program, as well as revise program requirements based on implementation experience.

Substance:

1. The program is being changed to convert from a permit applicability approach for modifications that look at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on the emissions from only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.

2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT

determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be removed. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.

3. In order to implement the program changes identified in items 1 and 2 above, the program is being changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project.

4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a "replacement of an emissions unit" as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.

5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.

6. The exemption for certain sized fuel burning equipment is being changed to (i) expand the exemption to include space heaters, (ii) reduce the maximum exemption size for natural gas-fired fuel burning equipment, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.

7. Exemptions are being added for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, and (iii) certain process testing and remediation projects that remain in existence for less than a year.

8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.

10. Provisions are being added to incorporate the federal requirements for the new $PM_{2.5}$ air quality standard.

11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.

12. Provisions are being added to allow terms and conditions of permits to be combined.

13. Finally, a number of other provisions have been rewritten to increase clarity, including clarifying (i) when to include fugitive emissions in determining permit applicability, (ii) how changes in stack height are subject to permit review requirements, (iii) how regulatory changes affect new and previous permit applications, (iv) which modifications are subject to public participation requirements, and (v) how to make permit changes to accommodate exempt equipment replacements.

Issues: The advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The current regulation poses many challenges to the affected entities in making applicability determinations, particularly for smaller businesses for which the program is mainly intended. Implementation of the current regulation has placed a significant administrative burden upon the affected entities. Under the current regulation, determination of permit applicability cannot be made with any reasonable degree of efficiency, effectiveness, or consistency. Interpreting the new regulation is a major time-consuming workload for the affected entities. However, the affected entities will lose the increased flexibility inherent in the more complex regulation.

The problems cited above relative to making applicability determinations also place a similar burden upon the department. The primary benefit as a result of the changes to this regulation will be a reduction in the complexity of the regulation and associated reduction in workload of the permit writers and field inspectors who make compliance determinations. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The main proposed change will eliminate "netting" of emissions increases and decreases when making Minor New Source Review permit applicability determinations. The determination will now be made based only upon emissions increases from only those emissions units that are physically or operationally changed. "Debottlenecked" emissions increases will no longer be considered when making Minor New Source Review permit applicability determinations. There are numerous other proposed minor changes that are streamlining in nature.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. These regulations contain applicability rules and standards for Minor New Source Review (MNSR). MNSR is the review of new and modified sources of certain air emissions from sources that do not qualify for review under Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR). MNSR review looks at the emissions changes resulting from new sources or modifications to existing sources. In general, construction, reconstruction, or modification of existing sources is contingent upon issuance of a permit. In the permit process, the Department of Environmental Quality (DEQ) conducts a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality.

The main proposed change is adoption of an approach that only looks at emissions increases from the unit being changed instead of looking at emissions increases and decreases from the units being changed (the affected units) plus emissions changes to other units upstream or downstream from the affected units, as is currently done. The differences between the two approaches are twofold. First, emissions decreases from emissions units at the source other than the affected units will no longer be used to offset emissions increases from the affected units, when determining whether the source must obtain a Minor NSR permit. Secondly, debottlenecked emissions increases (or decreases) will no longer be considered when determining if the change in emissions is sufficient to meet the requirements for getting a Minor NSR permit. Debottlenecked emissions are collateral emissions increases and decreases from unchanged processes and equipment upstream and/or downstream of the emissions unit being modified. In short, only emissions increases from the affected emissions units will be considered in determining permit applicability in the future.

The remaining proposed changes are streamlining in nature and include; requiring Best Available Control Technology (BACT) determinations for all emissions units that are subject to the minor new source review program; adding definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program; changing the way that replacement emissions units are exempted and changing certain exemption requirements for portable stationary sources; removal of transportable engines from a non-road engine exclusion and resolution of conflicting exemptions for reconstructed emissions units and modified emissions units; modifying the exemption for certain sized fuel burning equipment to include space heaters, to reduce the maximum exemption size for natural gas-fired fuel burning equipment, to aggregate similar types of fuel burning equipment under certain conditions; adding exemptions for vegetative waste recycling/mulching operations, open pit incinerators subject to the open burning rule, certain process testing and remediation projects that remain in existence for less than a year; removing the prohibition against exempting NSPS facilities; providing for processing and issuing informational permit applicability determinations; incorporating the federal requirements for the new PM2.5 air quality standard; clarifying the provisions covering permits for sources subject to the federal hazardous air pollutant new source review program; adding provisions to allow terms and conditions of permits to be combined; numerous other clarifications throughout the regulations.

The main economic benefit of the proposed regulations is expected to be lower administrative costs for the affected sources and for DEQ. According to DEQ, determination of permit applicability under current regulations which requires evaluation of a large number of possible types of emissions increases and decreases under a set of complex guidance criteria, which slows the permit process and requires additional discussion with the owners of the facility. Consideration of debottlenecked emissions is particularly costly for all the parties involved in the process, because the determination of those emissions are usually subject to a long negotiation process that usually results in withdrawal of the permit application. Thus, the proposed simpler permit applicability determination is expected to reduce administrative compliance costs. Also, sources are likely to find it cheaper to prepare a permit application package because it is a simpler approach and to be more certain of the outcome of the application process. The cost to prepare a permit application varies considerably from $800 for a small source to $80,000 for a large source. Similarly, the costs of an amendment to a permit vary from $160 to $4,200 depending on the size of the source.

While sources are likely to realize some administrative cost savings, they will also lose some flexibility and potential savings from that flexibility that may have been available to them when they could potentially "net out" of Minor NSR permit review. However, DEQ believes that most of the affected entities support the proposed regulations showing a willingness to adopt a simpler approach. This may be taken as an indication that the expected reduction in administrative costs outweighs the expected costs of losing some flexibility for sources.

Finally, the effect of proposed changes on the statewide emissions and consequently on air quality is not expected to be significant.

Businesses and Entities Affected. The proposed regulations will affect businesses and entities that wish to construct or modify their stationary sources in a way that is subject to MNSR. Approximately 335 permits were issued in 2001, 350 in 2002, 250 in 2003, and 170 in the first half of 2004.

Localities Particularly Affected.

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed changes are expected to reduce administrative compliance costs associated with obtaining a permit from DEQ. However, the reduction in compliance costs does not, by itself, infer a change in employment, since it is not known how the released funds will be used. If consulting businesses lose a significant number of customers as a result of the simpler approach, their demand for professional labor could decrease.

Effects on the Use and Value of Private Property. Any reduction in compliance costs for sources of air emissions can be expected to increase profits to firms owning the sources which could positively affect the asset value of the firms owning the sources.

Small Businesses: Costs and Other Effects. Most of the sources subject to these regulations are probably small businesses. While the proposed changes do not create significant costs, the most important changes have the effect of reducing compliance costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No significant adverse effect on small businesses is expected.

Real Estate Development Costs. No significant effect on real estate development costs is expected.

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

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

Background:

The regulation applies to the construction or reconstruction of new stationary sources or modifications (physical or operational changes) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a source-wide perspective to determine applicability based upon the net emissions changes due to or directly resulting from the modification (physical or operational change at an existing stationary source). Procedures for making changes to permits are included. There are provisions that allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

Summary:

The primary change being made to the program is to convert from a permit applicability approach for modifications that looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from new and modified emissions units. Currently, applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational change. The proposed program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project.

Secondary changes include (i) changes to the way that BACT determinations will be made, (ii) changes to the way that NSPS affected facilities are exempted, (iii) removal of transportable engines from a nonroad engine exclusion, (iv) resolution of conflicting exemptions for reconstructed emissions units and modified emissions units, (v) exemption of short-term testing and remediation projects and aggregation of emissions units under some other exemptions, (vi) changes to the way that replacement emissions units are exempted, (vii) changes to certain

exemption requirements for portable stationary sources, (viii) changes to the way that emission rates are calculated for certain exemptions, (ix) resolution of regulatory conflicts concerning open pit incinerators, and (x) clarification of other provisions of the minor new source review program.

Article 4

Standards of Performance for Stationary Sources (Rule 5-4)

9VAC5-50-240. Applicability and designation of affected facility.

A. The affected facilities ~~in~~ at stationary sources to which the provisions of this article apply are ~~facilities~~ emissions units that ~~emit or cause air pollution~~ are subject to the new source review program.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article apply ~~only to affected facilities subject to the new source review program~~ to any regulated air pollutant except to the extent that it is regulated under 9VAC5-60 (Hazardous Air Pollutant Sources). However, the exemption provided by this subsection does not extend to other properties of the exempted pollutants that may require regulation under 9VAC5-40 (Existing Stationary Sources) or 9VAC5-50 (New and Modified Stationary Sources).

9VAC5-50-250. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and ~~subsequent amendments or any orders issued by the board~~ related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. ~~As used in this article~~ Unless otherwise required by context, all terms not defined ~~here~~ herein shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10-), unless otherwise required by context~~ 9VAC5-80 (Permits for Stationary Sources), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Best available control technology" or "BACT" means, as used in 9VAC5-50-260, ~~a standard of performance~~ an emissions limitation (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from ~~any proposed~~ a new stationary source or project which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for ~~such source~~ the new stationary source or project through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9VAC5-50-400 et seq.) of this part or Article 1 (9VAC5-60-60 et seq.) or Article 2 (9VAC5-60-90 et seq.) of Part II of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources). If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. ~~In determining best available control technology for stationary sources subject to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved.~~

~~"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:~~

~~1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or~~

~~2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.~~

~~"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of 9VAC5 Chapter 80.~~

9VAC5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of ~~that resultant from using~~ emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility.

B. A new stationary source shall apply best available control technology for each regulated pollutant ~~that it would have the potential to emit in amounts~~ for which there would be an uncontrolled emission rate equal to or greater than the levels in ~~9VAC5-80-1320 C~~ 9VAC5-80-1105 C. For a new stationary source, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination for any regulated air pollutant that may be emitted from any affected emissions unit.

C. A ~~modification~~ project shall apply best available control technology for each regulated pollutant for which ~~it would result in a net emissions increase at the source~~ there would be an increase in the uncontrolled emission rate equal to or greater than the levels in 9VAC5-80-1105 D. This requirement applies to each ~~proposed~~ affected emissions unit ~~at which a net emissions increase in the pollutant would occur in amounts equal to or greater than the levels in 9VAC5-80-1320 D as a result of physical change or change in the method of operation in the unit~~ in the project. For a project, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination for any regulated air pollutant emitted, or that may be emitted, from any affected emissions unit.

D. For the phased construction of new stationary sources or projects, the ~~determination of best available control technology~~ BACT determination shall be reviewed and modified, as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the new stationary source or project. At such time, the owner of the applicable stationary source or project may be required to demonstrate the adequacy of any previous ~~determination of best available control technology~~ BACT determination for the ~~source~~ affected emissions units.

Article 6
Permits for New and Modified Stationary Sources

9VAC5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to ~~the construction, reconstruction, relocation or modification of any stationary source~~ (i) the construction of any new stationary source or any project (which includes any addition or replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. ~~The~~ Except as provided in subdivision 3 of this subsection, the provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of ~~9VAC5-80-1320~~ 9VAC5-80-1105.

1. Exemption from the requirement to obtain a minor NSR permit ~~under this article~~ shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

2. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in ~~9VAC5-80-1320~~ 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in ~~9VAC5 Chapter 40 (9VAC5-40)~~ 9VAC5-40 (Existing Stationary Sources) if it were an existing source or any applicable standard of performance in ~~9VAC5 Chapter 50 (9VAC5-50)~~ 9VAC5-50 (New and Modified Stationary Sources) shall be subject to the more restrictive of the provisions of either the emission standard in ~~9VAC5 Chapter 40 (9VAC5-40)~~ 9VAC5-40 (Existing Stationary Sources) or the standard of performance in ~~9VAC5 Chapter 50 (9VAC5-50)~~ 9VAC5-50 (New and Modified Stationary Sources).

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

D. ~~The~~ Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article. ~~The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the uncontrolled emissions rate of the source or net emissions increase.~~

~~E. An affected facility subject to Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 shall not be exempt from the provisions of this article, except where:~~

~~1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50; or~~

~~2. The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50.~~

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources~~,~~" ~~"new or modified sources, or both"~~ or "stationary sources" are applicable to the construction, relocation, replacement, ~~reconstruction~~ or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or ~~reconstruction~~ replacement of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2, and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5 60 60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the

construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60. Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the board or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to [insert the effective date of the amendments]. Any minor NSR permit applications that have not been determined to be complete as of [insert the effective date of the amendments] shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

M. Particulate matter ($PM_{2.5}$) emissions and particulate matter (PM_{10}) emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in minor NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

9VAC5-80-1105. Permit exemptions.

A. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the board prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at the site. Such notice shall be provided to the board not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the board.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

(6) The owner notifies the board, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article.

1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

(2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(4) Using gaseous fuel with a maximum heat input of less than 30,000,000 Btu per hour.

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair, or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons, or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The

uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the board that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the board in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the board of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked not more than 10 days after such dates.

14. Open pit incinerators subject to Article 40 (9VAC5-40-5600 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and used solely for the purpose of disposal of clean burning waste and debris waste.

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

Pollutant	**Emissions Rate**
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate

increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	**Emissions Rate**
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM10	10 tpy
Particulate matter (PM2.5)	5 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H2S)	9 tpy
Total Reduced Sulfur (including H2S)	9 tpy
Reduced Sulfur Compounds (including H2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10-6 tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, or (ii) the incinerator is an open pit incinerator subject to Article 40 (9VAC5-40-5600 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and used solely for the disposal of clean burning waste and debris waste.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. Any source category or portion of a source category subject to

this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

9VAC5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined ~~here~~ herein shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10)~~ 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

~~"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:~~

~~1. Applicable emission standards;~~

~~2. The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and~~

~~3. Any other applicable emission limitation, including those with a future compliance date.~~

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.

2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units ~~in a source~~ subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any ~~limit~~ term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable federal requirements.

3. Any emission standard, alternative emission standard, alternative ~~emission~~ emissions limitation, equivalent ~~emission~~ emissions limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a federal operating permit ~~issued under this article~~.

12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements , and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

13. Any standard or other requirement under § 126 (a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction~~, reconstruction or modification~~ of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction~~, reconstruction or modification~~ of the unit, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction~~, reconstruction or modification~~ of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or ~~installation~~ modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

"Emergency" means, in the context of ~~9VAC5-80-1320 B 2~~ 9VAC5-80-1105 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the board that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains ~~emission~~ emissions limitations that are enforceable

by the board or the department and meet the following criteria:

1. Are permanent;

2. Contain a legal obligation for the owner to adhere to the terms and conditions;

3. Do not allow a relaxation of a requirement of the implementation plan;

4. Are technically accurate and quantifiable;

5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with ~~9VAC5-80-1180~~ this article and other regulations of the board; and

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new stationary source.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of ~~new sources or expansions to existing ones~~ the construction, reconstruction, or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5-60-60 et seq.) of 9VAC5 Chapter 60.~~

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of 9VAC5 Chapter 60.~~

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT ~~approval~~ Approval prior to the construction of a new emissions unit. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of 9VAC5 Chapter 60.~~

"Federally enforceable" means all limitations and conditions ~~which~~ that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative ~~emission~~ emissions limitations, and equivalent ~~emission~~ emissions limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions (unless expressly designated as state-only enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit~~, unless expressly designated as not federally enforceable~~.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

5. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by ~~the~~ EPA ~~in accordance with 40 CFR Part 51~~ into the implementation plan.

6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of ~~an~~ a state operating permit ~~issued pursuant to a program approved by the EPA into an implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.~~ where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not federally enforceable by EPA.

c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as

any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise federally enforceable.

d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

7. Limitations and conditions in a ~~Virginia~~ regulation of the board or program that has been approved by ~~the~~ EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that ~~the~~ EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions ~~which~~ that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by ~~40 CFR 63.60~~ Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 B.

"Major modification" means any ~~modification defined as such in 9VAC5-80-1615 C or 9VAC5-80-2010 C, as may apply~~ project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that are in effect on the date the application is deemed complete under the provisions of 9VAC5-80-1160 B.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source ~~which~~ that emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that are in effect on the date the application is deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or ~~modifications (physical changes or changes in the method of operation) that do not qualify for~~ projects that are not subject to review under the major new source review program; (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations; and (iii) codified in ~~Article 6 (9VAC5-80-1100 et seq.) of this part~~ this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of~~, or addition to, a stationary source that would result in a net emissions increase~~ an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the ~~source~~ unit or ~~which~~ that results in the emission of any regulated air pollutant into the atmosphere not previously emitted~~, except that the~~. The following shall not~~, by themselves (unless previously limited by permit conditions),~~ be considered ~~modifications~~ physical changes or changes in the method of operation under this definition:

1. Maintenance, repair and replacement ~~which~~ of components that the board determines to be routine for a source type and which does not fall within the definition of "~~reconstruction~~ replacement";

2. An increase in the throughput or production rate of a unit (unless previously limited by any state enforceable and federally enforceable permit conditions established

pursuant to this chapter), if that increase does not exceed the operating design capacity of that unit;

3. An increase in the hours of operation (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter);

4. Use of an alternative fuel or raw material (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter) if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the ~~source~~ emissions unit was designed to accommodate that alternative use. A ~~source~~ unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;

6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws ~~and~~, permit conditions or regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or

~~6.~~ 7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions, or regulations or (ii) used to avoid any applicable new source review program requirement.

8. A change in ownership at a stationary source.

~~"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.~~

"Necessary preconstruction approvals or permits" means those permits or approvals required under ~~federal air quality control laws and regulations, and those air quality control laws and regulations which are~~ the NSR program that is part of the implementation plan.

~~"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in the uncontrolled emission rate from a particular physical change or change in the method of operation at a stationary source and (ii) any other increases and decreases in the uncontrolled emission rate at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in the uncontrolled emission rate is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in the uncontrolled emission rate is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in the uncontrolled emission rate from the particular change occurs. Creditable increases and decreases shall be federally enforceable or enforceable as a practical matter.~~

~~"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.~~

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or ~~modifications~~ projects (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in ~~Article 6 (9VAC5-80-1100 et seq.)~~ this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers)~~; or~~.

~~3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.~~

An internal combustion engine is not a nonroad engine if~~: 1. The~~ the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act~~; or~~.

~~2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.~~

~~For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.~~

"Plantwide applicability limitation (PAL)" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, ~~dollies~~ dolly, ~~trailers~~ trailer, or ~~platforms~~ platform.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone.

(2) Sulfur dioxide is a precursor to $PM_{2.5}$.

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

"Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, including any storage or handling of materials or products before, during, or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the ~~new or modified source~~ permit application information (exclusive of confidential information) for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;

2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4. Any economic or technical limitations on compliance with applicable standards of performance ~~which~~ that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound~~;~~.

2. Any pollutant (including any associated precursor pollutant) for which an ambient air quality standard has been promulgated~~;~~.

3. Any pollutant subject to any standard promulgated under ~~§ 111 of the federal Clean Air Act;~~ 40 CFR Part 60.

4. Any pollutant subject to a standard promulgated under or other requirements established under ~~§ 112 of the federal Clean Air Act concerning hazardous air pollutants~~ 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63~~; or~~.

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions which occur or would occur as a result of the construction~~, reconstruction, modification~~ or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source ~~which~~ that causes the secondary emissions. Secondary emissions include emissions from any off site support facility ~~which~~ that would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions ~~which~~ that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy

b. In reference to an emissions increase for a regulated air pollutant not listed in subdivision a of this definition, there is no emissions rate that shall be considered significant.

c. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the board and the emissions increase is determined to be significant using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source or emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

"Site" means one or more contiguous or adjacent properties under the control of the same person (or persons under common control).

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions ~~which~~ that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility or installation ~~which~~ that emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities ~~which~~ that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., ~~which~~ that have the same two-digit code) as described in the "Standard Industrial Classification Manual,"~~ as amended by the supplement~~ (see 9VAC5-20-21).

"Synthetic minor source" means a stationary source ~~whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act~~ that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but that has taken a restriction so that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 B, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete, or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1120. General.

A. No owner or other person shall begin actual construction~~, reconstruction or modification~~ of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit ~~to construct and operate or to modify and operate the source~~ under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.

B. Except as provided in ~~9VAC5-80-1320~~ 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a minor NSR permit to relocate the stationary source or unit.

C. ~~No~~ Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an ~~affected facility~~ emissions unit without first obtaining a minor NSR permit from the board.

D. ~~The board may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any~~

~~provision of the new source review program be combined into one application.~~ The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.

E. ~~The board may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed. The board may incorporate the terms and conditions of a permit issued pursuant to this article into a state operating permit provided all of the permitted emissions units are operational and determined to be in compliance in accordance with 9VAC5-80-1200.~~ The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit ~~issued under this article~~ shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit ~~issued under this article~~ shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of ~~9VAC5 Chapter 40~~ Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of ~~9VAC5 Chapter 50~~ Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit ~~issued under this article~~ that is not federally enforceable shall be marked in the permit as state-only enforceable and shall ~~only~~ be enforceable only by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting minor NSR permits for programs of construction ~~or modification~~ of a new stationary source or project in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

~~H. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of 9VAC5 Chapter 60 (9VAC5-60). Permits issued under this article shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.~~

9VAC5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit ~~subject to the provisions of this article~~ in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures acceptable to the board. ~~However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.~~

B. A separate application is required for each new stationary source or project.

C. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

D. Any application, form, report, or certification submitted to the board shall comply with the provisions of 9VAC5-20-230.

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit ~~under this article~~ does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major ~~NSR~~ new source review program regulations."

9VAC5-80-1150. Application information required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of ~~new and modified~~ stationary sources and emissions units subject to this article.

B. Each application for a minor NSR permit shall include such information as may be required by the board to determine the effect of the ~~proposed~~ new stationary source or emissions unit on the ambient air quality and to determine compliance with ~~the~~ any emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units ~~to be covered by the permit~~ in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.

b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the board.

c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the new stationary source or ~~emissions unit~~ the project, or the stack outlet elevation reduction, including the submission of measured air quality data at the proposed site prior to construction~~, reconstruction or modification~~. Such measurements shall be accomplished using procedures acceptable to the board.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9VAC5-80-1160. Action on permit application.

A. Prior to submitting an application for processing under subsections B through F of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination shall include sufficient information as may be necessary for the board to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the board will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection ~~B~~ C of this section shall be the date on which the board received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

~~B.~~ C. The board will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1190 and the preliminary determination of the board. This step may constitute the final step if the provisions of 9VAC5-80-1170 concerning public participation are not applicable.

2. When required, complete the public participation requirements in accordance with 9VAC5-80-1170.

3. Consider the public comments received in accordance with 9VAC5-80-1170.

4. Complete the final review and analysis and the final determination of the board.

~~C.~~ D. The board will normally take final action on an application after completion of the applicable steps in subsection ~~B~~ C of this section, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1170 F, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

~~D.~~ E. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission ~~limitations~~ standards. These emission ~~limitations~~ standards are applicable during any emission testing conducted in accordance with 9VAC5-80-1200.

~~E.~~ F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of ~~9VAC5 Chapter 170~~ 9VAC5-170 (Regulation for General Administration).

~~F.~~ G. Within five days after notification to the applicant pursuant to subsection ~~C~~ E of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1170 E 1.

9VAC5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 ~~A~~ B, the applicant for a minor NSR permit for a new major stationary source ~~or a major modification~~ shall notify the public of the proposed major stationary source ~~or major modification~~ in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;

2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice; and

4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Applications for new major stationary sources and major modifications.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4. Applications for new stationary sources ~~which~~ or projects that have the potential for public interest concerning air quality issues, as determined by the board ~~in its discretion~~. The identification of such sources ~~may~~ shall be made using the following nonexclusive criteria:

a. Whether the new stationary source or project is opposed by any person;

b. Whether the new stationary source or project has resulted in adverse media;

c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

d. Whether the new stationary source or project has generated adverse comment by a local official, governing body or advisory board.

~~4.~~ 5. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds

the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition ~~must be available during the public comment period~~ and required by 9VAC5-50-20 H 3 shall be included in the application.

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 of the Code of Virginia, written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the minor NSR permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.

2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person).

3. The reason why direct consideration by the board is requested.

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial or revision of the permit in question.

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

G. The board will review any request made under subsection F of this section, and will take final action on the request as provided in 9VAC5-80-1160 ~~C~~ D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the minor NSR permit application ~~under this article~~ using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

9VAC5-80-1180. Standards and conditions for granting permits.

A. No minor NSR permit will be granted ~~pursuant to this article~~ unless it is shown to the satisfaction of the board that the source will comply with the following standards:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under ~~9VAC5 Chapter 50 (9VAC5-50-10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under ~~9VAC5 Chapter 60 (9VAC5-60-10 et seq.)~~ 9VAC5-60 (Hazardous Air Pollutant Sources);

2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;

3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

4. The source shall be designed, built and equipped to operate without causing a violation of the applicable

provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. ~~Permits~~ Minor NSR permits may ~~be granted to stationary sources or emissions units that~~ contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. ~~Permits granted pursuant to this article~~ Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. The standard may prescribe, as an alternative to or a supplement to ~~an emission limitation~~ a limit prescribed under subdivision 1 of this subsection, ~~an~~ equipment, work practice, fuels specification, process materials, maintenance, or operational ~~standard~~ standards, or any combination of them.

D. ~~Permits issued under this article~~ Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. ~~Limit~~ Limits on fuel sulfur content.

b. ~~Limit~~ Limits on production rates with time frames as appropriate to support the emission standards.

c. ~~Limit~~ Limits on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. ~~Stack~~ Performance test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9VAC5-80-1190. Application review and analysis.

No minor NSR permit shall be granted ~~pursuant to this article~~ unless compliance with the standards in 9VAC5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications for new stationary sources and projects shall be subject to the following review and analysis:

a. A control technology review to determine if the ~~source~~ emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under ~~9VAC5 Chapter 50 (9VAC5-50-10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources).

b. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Applications for stationary sources of ~~hazardous~~ toxic air pollutants shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under ~~9VAC5 Chapter 60 (9VAC5-~~

~~60-10 et seq.)~~ 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Applications under 9VAC5-80-1120 C (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the board.

4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

9VAC5-80-1200. Compliance determination and verification by performance testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. For stationary sources of ~~hazardous air~~ toxic pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the ~~new or modified~~ source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with one or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of subsections A, B and C of this section shall be met as specified in those parts of Title 40 of the Code of Federal Regulations.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the ~~new or modified~~ source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the board to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

9VAC5-80-1210. Permit invalidation, suspension, revocation and enforcement.

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification, or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

B. A minor NSR permit ~~granted pursuant to this article~~ shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

1. Eighteen months from the date the minor NSR permit is granted;

2. Nine months from the date of the issuance of the last permit or other authorization (other than minor NSR permits) ~~granted pursuant to this article)~~ from any governmental entity; or

3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including minor NSR permits) ~~granted pursuant to this article)~~.

~~B.~~ C. A minor NSR permit ~~granted pursuant to this article~~ shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction,

reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of ~~a~~ the phased construction of a new stationary source or project; each phase must commence construction within 18 months of the projected and approved commencement date.

~~C.~~ D. The board may extend the periods prescribed in subsections ~~A~~ B and ~~B~~ C of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1280.

~~D.~~ E. Any owner who constructs or operates a ~~new or modified~~ source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a ~~new or modified~~ source subject to this ~~article~~ section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

~~E. Permits issued under this article~~ F. Minor NSR permits shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

~~F.~~ G. The board may revoke any minor NSR permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or ~~emission~~ emissions limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

~~G.~~ H. The board may suspend, under such conditions and for such period of time as the board may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection ~~F~~ G of this section or for any other violations of the regulations of the board.

~~H.~~ I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

~~I.~~ J. Violation of the regulations of the board shall be grounds for revocation of minor NSR permits ~~issued under this article~~ and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of ~~9VAC5 Chapter 170~~ 9VAC5-170 (Regulation for General Administration) and the Virginia Air Pollution Control Law.

~~J.~~ K. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a minor NSR permit, or to render a minor NSR permit invalid.

~~K.~~ L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR permit is invalid or revoked prior to any final decision rendered under subsection ~~J~~ K of this section.

~~L.~~ M. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

~~M.~~ N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections ~~A, B and C~~ B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

9VAC5-80-1220. Existence of permit no defense.

The existence of a minor NSR permit ~~under this article~~ shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

9VAC5-80-1240. Transfer of permits.

A. No person shall transfer a minor NSR permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current minor NSR permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current minor NSR permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable ~~emission~~ emissions units that are exempt from the provisions of this article by ~~9VAC5-80-1320 A 1 c~~ 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

9VAC5-80-1250. General permits.

A. The requirements for issuance of a general permit are as follows:

1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General permits shall be issued in accordance with § 2.2-4006 A 9 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit;

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit; and

e. A brief description of the public comment procedures.

B. The requirements for application for coverage under a general permit are as follows:

1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit ~~issued under the other provisions of this article~~.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that qualify for coverage under the general permit after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for granting authority to operate under a general permit are as follows:

1. The board shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.

3. A response to each general permit application may be provided at the discretion of the board. The general permit may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit ~~issued under this article~~ if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

9VAC5-80-1255. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the board may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the board.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

B. The board may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the board and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the board may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the board may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1260. ~~Changes to~~ Actions to change permits.

A. The general requirements for ~~making~~ actions to make changes to minor NSR permits are as follows:

1. ~~Changes~~ Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit ~~issued under this article~~ shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.

2. Changes to a minor NSR permit ~~issued under this article~~ may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a minor NSR permit ~~issued under this article~~ and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a minor NSR permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit ~~revisions~~ changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

9VAC5-80-1270. Administrative permit amendments.

A. Administrative permit amendments shall be ~~required~~ used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-1240 have been fulfilled.

~~4. The combining of permits under the new source review program as provided in 9VAC5-80-1120 D.~~

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement~~;~~.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements~~;~~.

3. Do not require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard;~~ requirement.

4. ~~Do~~ Except as provided in subdivision C 2 of this section, do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory

requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a ~~modification under~~ project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act~~;~~.

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act~~; and~~ that would otherwise require a permit under the new source review program.

6. Are not required to be processed as a significant amendment under 9VAC5-80-1290 or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any minor NSR permit term or ~~permit~~ condition that meets the criteria in 9VAC5-80-1120 F 1 ~~(i)~~ as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit ~~issued under this article~~ or any repealed or amended regulation from which this article is derived.

4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit to its replacement emissions unit that otherwise meets the requirements for exemption from the minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

C. ~~Notwithstanding subsection A of this section, minor~~ Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a minor NSR permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.

2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures shall include ~~all of the following: 1. A~~ a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs~~. 2. A~~ , accompanied by a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as ~~follow~~ follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed ~~permit terms and conditions~~ amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9VAC5-80-1290. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

c. Seek to establish or change a minor NSR permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a ~~modification under~~ project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. ~~The~~ At the discretion of the board, the provisions of 9VAC5-80-1170 D and E shall apply to requests made under this section if the ~~permit is for a stationary source~~ emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9VAC5-80-1300. Reopening for cause.

A. A minor NSR permit may be reopened and ~~amended~~ revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the ~~emissions standards or other~~ terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the ~~standards and~~ requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9VAC5-80-1320 ~~Permit exemption levels.~~ (Repealed.)

~~A. The general requirements for permit exemption levels are as follows:~~

~~1. The provisions of this article do not apply to the following stationary sources or emissions units:~~

~~a. The construction, reconstruction, relocation or modification of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section.~~

~~b. The reconstruction of any stationary source or emissions unit if the potential to emit resulting from the reconstruction will not increase.~~

~~c. The relocation of a portable emissions unit provided that:~~

(1) The new emissions from the portable emissions unit are secondary emissions;

(2) The portable emissions unit has previously been permitted or is subject to a general permit;

(3) The unit would not undergo modification or reconstruction;

(4) The unit is suitable to the area in which it is to be located; and

(5) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any source of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a modification.

2. In determining whether a facility source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D taken as a group and under the provisions of subsection E or F to be exempt from this article.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article as they pertain to construction, modification, reconstruction or relocation.

1. Fuel burning equipment units (external combustion units, not engines and turbines) as follows:

a. Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

b. Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

c. Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

d. Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.

2. Engines and turbines used for emergency purposes only and which do not exceed 500 hours of operation per year at a single stationary source as follows:

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons; or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

C. The exemption of new and relocated sources shall be determined as specified below:

1. Stationary sources with a potential to emit at rates less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to construction or relocation.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM_{10})	15 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of	35 tpy

~~SO_2 and HCl)~~	
~~Municipal solid waste landfill emissions (measured as nonmethane organic compounds)~~	~~22 tpy~~

~~2. Facilities exempted by subsection B of this section shall not be included in the determination of potential to emit of a stationary source for purposes of exempting sources under this subsection.~~

~~3. If the particulate matter (PM_{10}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10}), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM_{10}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.~~

~~D. The exemption of modified and reconstructed sources shall be determined as specified below:~~

~~1. Stationary sources with net emissions increases less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to modification or reconstruction.~~

~~Pollutant~~	~~Emissions Rate~~
~~Carbon Monoxide~~	~~100 tons per year (tpy)~~
~~Nitrogen Oxides~~	~~10 tpy~~
~~Sulfur Dioxide~~	~~10 tpy~~
~~Particulate Matter~~	~~15 tpy~~
~~Particulate Matter (PM_{10})~~	~~10 tpy~~
~~Volatile organic compounds~~	~~10 tpy~~
~~Lead~~	~~0.6 tpy~~
~~Fluorides~~	~~3 tpy~~
~~Sulfuric Acid Mist~~	~~6 tpy~~
~~Hydrogen Sulfide (H_2S)~~	~~9 tpy~~
~~Total Reduced Sulfur (including H_2S)~~	~~9 tpy~~
~~Reduced Sulfur Compounds (including H_2S)~~	~~9 tpy~~
~~Municipal waste combustor organics (measured as total tetra through octa chlorinated dibenzo p dioxins and dibenzofurans)~~	~~3.5×10^{-6} tpy~~
~~Municipal waste combustor metals (measured as particulate matter)~~	~~13 tpy~~
~~Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)~~	~~35 tpy~~
~~Municipal solid waste landfill emissions (measured as nonmethane organic compounds)~~	~~22 tpy~~

~~2. Facilities exempted by subsection B of this section shall not be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection. However, any other increases and decreases in the uncontrolled emission rate at the source that are concurrent with a particular change shall be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection, and if the change is not exempt, the other increases shall be subject to 9VAC5-50-260-C.~~

~~3. If the particulate matter (PM_{10}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10}), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM_{10}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.~~

~~E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:~~

~~1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of 9VAC5 Chapter 60 as provided in 9VAC5-60-300 C 1, C 2, D or E shall be exempt from the provisions of this article.~~

~~2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.~~

~~a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.~~

~~b. Ethylene oxide sterilizers.~~

~~c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20 Chapter 60 (9VAC20-60)~~

~~F. Any source category or portion of a source category subject to the federal hazardous air pollutant new source review program shall be exempt from the provisions of this~~

~~article if specifically exempted from that program by 40 CFR Part 61 or 63.~~

VA.R. Doc. No. R06-106; Filed January 12, 2010, 2:06 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

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 Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, 9VAC20-60-270).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 and 272.

Effective Date: March 3, 2010.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

Hazardous Waste Management Regulations, 9VAC20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The amendments specifies that the federal regulatory text as it existed prior to July 1, 2009, is incorporated. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date of this amendment (March 3, 2010), whichever is later. Additionally, for the chapter to operate properly, some additional specifications about what portions of the federal rules are not being adopted have been added.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, ~~2007~~ 2009, with the effective date as published in the Federal Register notice or ~~February 6, 2008~~ March 3, 2010, whichever is later.

9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

3. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

4. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et

seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

8. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22 and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

11. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 260 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64717) (definition of solid waste rule) are not adopted herein.

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-80).

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

8. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64717) (definition of solid waste rule) are not adopted herein.

9. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on December 19, 2008, (73 FR 77953) (RCRA Comparable Fuel Exclusion) are not adopted herein.

9VAC20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of

universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the department no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia--United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the department receives an application form and any supplemental information, which are completed to the department's 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. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the department.

7. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

(1) Failure to submit a completed Part B application on time;

(2) Failure to furnish any information required by this chapter;

(3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

(4) Violation of this chapter; and

(5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

(1) To be considered for voluntary termination such request shall:

(a) Be received by the department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

(b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

(a) Which is not in compliance with the standards contained in 9VAC20-60-265; or

(b) When termination proceedings have been instituted under this section.

d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

a. Initiate enforcement action based on the permit that has been continued;

b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

c. Issue a new permit with appropriate conditions; or

d. Take other actions authorized by this chapter.

16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees.

17. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 270 as promulgated by U.S. EPA

on October 30, 2008, (73 FR 64717) (definition of solid waste rule) are not adopted herein.

VA.R. Doc. No. R10-1788; Filed January 11, 2010, 2:08 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management 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 Virginia Waste Management Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC20-80. Solid Waste Management Regulations (amending 9VAC20-80-10, 9VAC20-80-160).**

9VAC20-85. Coal Combustion Byproduct Regulations (amending 9VAC20-85-70).

9VAC20-101. Vegetative Waste Management and Yard Waste Composting Regulations (amending 9VAC20-101-10).

9VAC20-170. Transportation of Solid and Medical Wastes on State Waters (amending 9VAC20-170-10).

Statutory Authority: §§ 10.1-1402, 10.1-1408.1 and 10.1-1454.1 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

Effective Date: March 3, 2010.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments conform the regulation to the requirements of Chapters 27 and 348 of the 2009 Acts of Assembly by revising the definition of "disclosure statement" to remove the requirement that social security numbers of key personnel be provided, and providing that the board shall not exclude or exempt from the definition of "solid waste" or any solid waste permitting requirements the use, reuse, or reclamation of unamended coal combustion byproduct in an area designated as a 100-year floodplain.

Part I
Definitions

9VAC20-80-10. Definitions.

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Anaerobic digestion" means the decomposition of organic materials in the absence of oxygen or under low oxygen concentration. Anaerobic conditions occur when gaseous oxygen is depleted during respiration. Anaerobic decomposition is not considered composting.

"Applicant" means any and all persons seeking or holding a permit under this chapter.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste management unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use which is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"By-product material" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. By-product does not include a co-product that is produced for the general public's use and is ordinarily used in the form that is produced by the process.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Closed facility" means a solid waste management facility which has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a unit of a permitted landfill is filled, capped, certified as final covered by a professional engineer, inspected, and closure notification is performed by the department in accordance with 9VAC20-80-250 E 6, 9VAC20-80-260 E 5, or 9VAC20-80-270 E 5.

"Coal combustion by-products" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by coal-fired electrical or steam generating units.

"Combustion unit" means an incinerator, waste heat recovery unit or boiler.

"Commercial chemical product" means a chemical substance which is manufactured or formulated for commercial, agricultural or manufacturing use. This term includes a manufacturing chemical intermediate, off-specification chemical product, which, if it met specification, would have been a chemical product or intermediate. It includes any residues remaining in the container or the inner liner removed from the container that has been used to hold any of the above which have not been removed using the practices commonly employed to remove materials from that type of container and has more than one inch of residue remaining.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Community activity" means the normal activities taking place within a local community to include residential, site preparation and construction, government, commercial, institutional, and industrial activities.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility which will ultimately upgrade it to conform to this chapter.

"Composite liner system" means a system designed and constructed to meet the requirements of 9VAC20-80-250 B 9.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as specified in 12VAC5-581-630.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or 1 kilogram of acutely hazardous waste.

"Confined composting system" means a composting process that takes place inside an enclosed container.

"Construction/Demolition/Debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, or combinations of the above solid wastes.

"Construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents,

asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material which is used to blanket solid waste in a landfill.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store or treat before or instead of being abandoned, disposed of, burned or incinerated.

"Discarded material" means a material which is:

A. Abandoned by being:

1. Disposed of;

2. Burned or incinerated; or

3. Accumulated, stored or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned or incinerated;

B. Recycled used, reused, or reclaimed material as defined in this part; or

C. Considered inherently waste-like as described in 9VAC20-80-140 C.

"Discharge of dredged material" means any release of material that is excavated or dredged from the waters of the U.S. or state waters and returned to the waters of the U.S. or state waters.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director (see DEQ Form DISC-01 and 02 (Disclosure Statement), which includes:

1. The full name~~,~~ and business address~~, and social security number~~ of all key personnel;

2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecution, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past ten years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within ten years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act,

Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past ten years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"EPA" means the United States Environmental Protection Agency.

"Existing unit" means any permitted solid waste management unit that is receiving or has received solid waste and has not been closed in accordance with the regulations in effect at the time of closure. Waste placement in existing units shall be consistent with past operating practices, the permit, or modified practices to ensure good management.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility approved to manage solid waste as defined in Part A of the permit application. For unpermitted solid waste management facilities as defined in 9VAC20-80-200, the facility boundary is the boundary of the property where the solid waste is located. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including lowlying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management unit.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste listed in Part V, Table 5.1.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants which is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Ignitable waste" means: (i) Liquids having a flash point of less than 140°F (60°C) as determined by the methods specified in the Virginia Hazardous Waste Management Regulations (9VAC20-60); (ii) nonliquids liable to cause fires through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or liable, when ignited, to burn so vigorously and persistently as to create a hazard; (iii) ignitable compressed gases, oxidizers, or both.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste which is a by-product of a production process.

"Inert waste" means solid waste which is physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert wastes include rubble, concrete, broken bricks, bricks, and blocks.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

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

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill disposal area" means the area within the facility boundary of a landfill in which solid waste is buried or permitted for actual burial.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Lateral expansion" means a horizontal expansion of the waste management unit boundary.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated ground water is regulated as contaminated ground water.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Manufacturing or mining by-product" means a material that is not one of the primary products of a particular manufacturing or mining operation, but is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next process step within a short time.

"Materials recovery facility" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures and techniques used to systematically analyze, inspect and collect data on operational parameters of the facility or on the quality of air, ground water, surface water, and soils.

"Monitoring wells" means a well point below the ground surface for the purpose of obtaining periodic water samples from ground water for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter or the Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101).

"Municipal solid waste" means that waste which is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nonsudden events" mean those events continuing for an extended time period or for long term releases of contaminants into the environment which take place over time such as leachate contamination of ground water.

"Nuisance" means an activity which unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-80-180.

"Operating Record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-80-570).

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance (see 40 CFR 761.3).

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

"Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance which causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management unit.

"Post-closure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Private solid waste disposal facility" means any solid waste disposal facility including, without limitations, all solid waste disposal facilities other than facilities owned or operated by a local government, combination of local governments or public service authority.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Public land" means any land, used for any purpose, that is leased or owned by a governmental entity.

"Putrescible waste" means solid waste which contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"RDF (Refuse Derived Fuel)" means solid waste that is processed to be used as fuel to produce energy.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Registered professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board of Architects, Professional Engineers, Land Surveyors, and Landscape Architects (18VAC10-20).

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include: any release which results in exposure to persons solely within a workplace; release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (ground water, surface water, soils and sediments) and debris, that are managed for the purpose of remediating a site under Part IV (9VAC20-80-170 et seq.) or Part V (9VAC20-80-240 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160). For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under Part IV or V of this chapter or under the Voluntary Remediation Regulations (9VAC20-160). An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Residential waste" means household waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, use, reuse, or reclamation of solid wastes, recovery of energy and disposal of non-recoverable waste residues.

"Rubbish" means combustible or slowly putrescible discarded materials which include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means bits and pieces of metal parts such as bars, rods, wire, empty containers, or metal pieces that may be combined together with bolts or soldering which are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

(Note: This term includes all sites whether they are planned and managed facilities or are open dumps.)

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as 'solid waste' in Part III (9VAC20-80-140 et seq.) of this chapter.

"Solid waste boundary" means the outermost perimeter of the solid waste (vertical projection on a horizontal plane) as it would exist at completion of the disposal activity within the facility boundary.

"Solid waste disposal area" means the area within the facility boundary of a landfill facility in which solid waste is buried.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility ("SWMF")" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse or reclamation.

"Special wastes" mean solid wastes that are difficult to handle, require special precautions because of hazardous properties or the nature of the waste creates waste management problems in normal operations. (See Part VIII (9VAC20-80-630 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"Stabilized compost" means a compost that has passed the stability criteria outlined in 9VAC20-80-330 D 2 a.

"State solid waste management plan ("State Plan" or "Plan")" means the plan of the Virginia Waste Management Board that sets forth solid waste management goals and objectives and describes planning and regulatory concepts to be employed by the Commonwealth.

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

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural components of a solid waste disposal unit" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the solid waste disposal facility that is necessary for protection of human health and the environment.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or coal combustion by-products spread and compacted with proper equipment and covered with a vegetated soil cap.

"Sudden event" means a one time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment or impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of non-earthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device which uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inches to 4 inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from 4 inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unadulterated wood" means wood that is not painted, nor treated with chemicals such as preservatives nor mixed with other wastes.

"Underground source of drinking water" means an aquifer or its portion:

A. Which contains water suitable for human consumption; or

B. In which the ground water contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the management of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material which is either:

A. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

B. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect or other arthropod which transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see 9VAC20-101.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste management unit boundary.

"VPDES ("Virginia Pollutant Discharge Elimination System")" means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law, and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "Refuse Derived Fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management unit boundary" means the vertical surface located at the boundary line of the unit. This vertical surface extends down into the uppermost aquifer.

"Waste needing special handling (special waste)" means any solid waste which requires extra or unusual management when introduced into a solid waste management facility to insure protection of human health or the environment.

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

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" are, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

A. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;

B. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

C. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:

1. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

2. The discharge of untreated sewage by any person into state waters; and

3. The contribution to the degradation of water quality standards duly established by the State Water Control Board;

are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in ground waters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States or waters of the U.S." means:

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

B. All interstate waters, including interstate "wetlands";

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

1. Any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes;

2. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

3. Any such waters which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

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

6. The territorial sea; and

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

"Wetlands" mean those areas that are defined by the federal regulations under 33 CFR Part 328.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill which is actively receiving solid waste for compaction and cover.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

9VAC20-80-160. Conditional exemptions.

A. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state agencies:

1. Drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy;

2. Solid waste from the extraction, beneficiation and processing of ores and minerals, including coal;

3. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy when used in accordance with the standards developed by the Department of Environmental Quality;

4. Waste or by-product derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner or horticultural growing medium as defined in § 3.1-106.2 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.1-126.2:1 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services;

5. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices;

6. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that they do not pose a hazard or a nuisance; and

7. Chipped waste tires used as the drainage material in construction of septage drainfields regulated under the authority of the Virginia Department of Health.

B. Fossil fuel combustion products are exempt from this chapter provided they are used in one or more of the following applications or when handled, processed, transported, or stockpiled for such use:

1. Used as a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with VDOT specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18" of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year floodplain;

2. Processed with a cementitious binder to produce a stabilized structural fill product which is spread and compacted with proper equipment for the construction of a project with a specified end use;

3. Used for the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

NOTE 1: Residuals from the processing operations remain solid wastes.

NOTE 2: The use of fossil fuel combustion products outlined in this regulation has been evaluated only with regard to the protection of human health and the environment. A qualified professional engineer should evaluate any structural application of fossil fuel combustion products.

C. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard or a public nuisance:

1. Paper and paper products;

2. Unadulterated wood waste which is to undergo size reduction in order to produce mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Waste tire chips; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of 9VAC20-80-150 H.

Part III
Management Standards

Article 1
Locational Restrictions

9VAC20-85-70. Locational restrictions.

Fossil fuel combustion products used, reused, or reclaimed on or below ground shall not be placed:

1. In areas subject to base floods unless it can be shown that fossil fuel combustion products can be protected from inundation or washout and that flow of water is not restricted, except for unamended coal combustion byproduct which shall not be placed in areas subject to base floods;

2. With the vertical separation between the fossil fuel combustion products and the maximum seasonal water table or bedrock less than two feet;

3. Closer than:

a. 100 feet of any perennial stream,

b. 100 feet of any water well (other than a monitoring well) in existence at the onset of the project,

c. 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones,

d. 100 feet of a sinkhole, or

e. 25 feet from any property boundary or, in the case of projects permitted by the DMME, 25 feet from the permit boundary.

(NOTE: All distances are to be measured in the horizontal plane.)

4. In wetlands, unless applicable federal, state and local permits are obtained; and

5. On the site of an active or inactive dump, unpermitted landfill, lagoon, or similar facility, even if such facility is closed.

Part I
Definitions

9VAC20-101-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Virginia Solid Waste

Management Regulations, 9VAC20-80-10 et seq., define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling.

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.

"Board" means the Virginia Waste Management Board.

"Building" means an enclosed structure which has no open side.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Decomposition of vegetative waste" means a controlled natural process, active or passive, which results in the decay and chemical breakdown of vegetative waste.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name~~,~~ and business address~~, and social security number~~ of all key personnel;

2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" means both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to

the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Securities Exchange Act of 1934 (15 USC § 78a et seq.), the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Land clearing activities" means the removal of flora from a parcel of land.

"Land clearing debris" means vegetative waste resulting from land clearing activities.

"Landscape maintenance" means the care of lawns, shrubbery, and vines, and includes the pruning of trees.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial waste water.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter or the Solid Waste Management Regulations, 9VAC20-80-10 et seq.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Owner of real property" means a person, persons or legal entity who holds title to a parcel of real property, and, for the purpose of this chapter, any person, persons or legal entity who holds more than 5.0% of the stock or substance of a company or corporation that holds title to a parcel of real property.

"Permit by rule" means provisions of the regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Putrescible waste" means solid waste which contains organic material capable of being decomposed by micro-organisms and causes odors.

"Runoff" means any rainwater, wastewater, leachate, or other liquid that drains over land from any part of the solid waste management facility.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. For the purposes of this chapter only, "long term storage" shall be deemed to occur if during any period of 30 consecutive calendar days the site was not free of solid waste.

"Structural roadway prism" means the line of repose from the shoulder break to the shoulder break of the roadway, usually a 1:1 slope.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vegetative waste management facility" means a solid waste management facility that manages vegetative waste.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter. (Note: Yard wastes are also vegetative waste; however, the terms are not interchangeable because

vegetative wastes may include wastes that are not yard wastes.)

"Yard waste compost" means a stabilized organic product produced from yard waste by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land so that it does not pose a present or potential hazard to human health or the environment.

"Yard waste composting" means the controlled aerobic yard waste decomposition process by which yard waste compost is produced.

"Yard waste composting facility" means an engineered facility for composting of yard waste which is so located, designed, constructed, and operated to isolate, process, and manage the yard waste and yard waste compost so that it does not pose a present or potential hazard to human health or the environment.

9VAC20-170-10. Definitions.

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

"Affiliated company" means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10% or more of the outstanding voting securities of a pure captive insurer or (ii) any company of which 10% or more of the voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent, subsidiary, or associated company.

"Anniversary date" means the date of issuance of a financial mechanism.

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Associated company" means any company in the same corporate system with a pure captive insurer.

"Association captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of the members of an insurance association.

"Beneficial use" means both instream and offstream uses of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

"Board" means the Virginia Waste Management Board.

"Bodily injury" means the death or injury of any person incident to a waste deposit from a vessel, but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Captive insurer" means any pure captive insurer or any association captive insurer.

"Certificant" means an owner or operator who has been issued a Certificate of Financial Responsibility under this chapter.

"Certificate applicant" means an owner or operator who has applied for a Certificate of Financial Responsibility or for the renewal of a Certificate of Financial Responsibility under this chapter.

"Certificate of Financial Responsibility" or "certificate" means a Certificate of Financial Responsibility issued under Part VI (9VAC20-170-270 et seq.) of this chapter, unless otherwise indicated.

"Certified copy" means a legible copy certified as accurate by a notary public or other person authorized to take oaths in the United States.

"CFR" means Code of Federal Regulations.

"Charter by demise" means to hire for exclusive use through a lease.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter.

"Commercial transport" means transportation for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Commercial transporter" means any person who transports for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Construction demolition debris waste" or "CDD waste" means solid waste that is produced or generated during construction or destruction, remodeling, or repair of pavements, houses, commercial buildings, their foundations and other structures. Construction demolition debris wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction demolition debris wastes.

"Container" means any watertight structure that meets the provisions of this chapter.

"Containment and cleanup" means abatement, containment, removal and disposal of solid wastes or regulated medical wastes that have been deposited to state waters or adjoining shorelines, and the restoration of the environment to its existing state prior to a deposit of the wastes.

"Demise charterer" means a person with whom the owner of the vessel enters into a demise charter. The charterer takes over all possession and control of the vessel from the owner of the vessel and becomes subject to the duties and responsibilities of ownership. The charterer is also responsible for directing the operations of the vessel and providing the master and crew.

"Department" means the Virginia Department of Environmental Quality.

"Destination facility" means a facility that treats, disposes of, or recycles solid wastes or regulated medical wastes in accordance with applicable federal and state regulations.

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

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name~~,~~ and business address~~, and social security number~~ of all key personnel;

2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, that are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and abilities of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Existing facility" means any receiving facility that is constructed prior to July 2, 2003.

"Generator" means any person, by site, whose act or process produces solid wastes or regulated medical wastes, or whose act first causes solid wastes or regulated medical wastes to become subject to this chapter.

"Insurance association" means any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity

is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Leachate" means a liquid that has passed through or emerged from solid waste or regulated medical waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"Load Line Certificate" means a certificate issued by the American Bureau of Shipping (ABS) or other similarly qualified organizations authorized by the Secretary of Transportation (U.S. Department of Transportation) to the owner of the vessel, in accordance with 46 USC Chapter 51.

"Manifest" means the shipping document originated and signed by the generator in accordance with the provisions of this chapter. For transportation of regulated medical wastes, the hazardous materials shipping paper requirements under 49 CFR Part 172 Subpart C may be reflected in the manifest.

"Medical waste" or "regulated medical waste" means solid wastes defined to be regulated medical wastes by Part III of the Regulated Medical Waste Management Regulations (9VAC20-120). Solid waste packaged as regulated medical waste is regulated medical waste. Medical wastes that have been sterilized, treated or incinerated in accordance with the Regulated Medical Waste Management Regulations (9VAC20-120) are no longer considered as regulated medical waste.

"Navigable waters of the Commonwealth" means state water being used or susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.

"New facility" means any receiving facility that is constructed on or after July 2, 2003.

"Odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

"Operator" means, in the case of a receiving facility, any person responsible for the overall operation of a receiving facility that handles solid wastes or regulated medical wastes. In the case of a vessel, it means any person who operates, charters by demise, rents or otherwise exercises control over or responsibility for a vessel.

"Owner" means, in the case of a receiving facility, any person who owns a receiving facility or part of a receiving facility that handles solid wastes or regulated medical wastes as cargo for hire. In the case of a vessel, it means any person who owns a vessel or a part of a vessel that transports solid wastes or regulated medical wastes as cargo for hire.

"Parent" means a corporation, partnership, governmental unit or agency, or individual who directly or indirectly owns, controls or holds, with power to vote, more than 50% of the outstanding voting securities of a pure captive insurer.

"Permit by rule" means provisions including public participation of this chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to a waste deposit from a vessel. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial responsibility" means an entity that provides financial responsibility to an owner and operator of a vessel transporting solid wastes or regulated medical wastes through one of the mechanisms listed in 9VAC20-170-310, including a financial institution, surety, or issuer of a letter of credit.

"Public vessel" means a vessel that is owned or demise chartered and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

"Pure captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Receiving facility" means a facility, vessel or operation that loads or off-loads solid wastes or regulated medical wastes transported upon the navigable waters of the Commonwealth by a commercial transporter.

"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) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9VAC20-60); (ii) scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse and source-separated recyclables; (iii) solid or dissolved material in domestic sewage; (iv) 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 (v) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

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

"Subsidiary company" means any corporation of which 50% or more of the outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent or by a company that is a subsidiary of the parent.

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

"Transport" or "transportation" means any movement of solid wastes or regulated medical wastes, and any packing, loading, unloading or storage incidental thereto.

"USC" means the U.S. Code.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Waste deposit" or "deposit of waste" means any solid waste or regulated medical waste from a vessel or a receiving facility that is placed, discharged, spilled, dropped, or leaked into state waters or adjoining shorelines.

VA.R. Doc. No. R10-2011; Filed January 12, 2010, 2:07 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State 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: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-30, 9VAC25-31-100, 9VAC25-31-130, 9VAC25-31-170, 9VAC25-31-200, 9VAC25-31-290, 9VAC25-31-400).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, 124, 403 and 503.

Effective Date: March 3, 2010.

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

Summary:

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect changes to 40 CFR Parts 9, 122, and 412 as published in the Federal Register (Volume 73, No. 225, dated November 20, 2008).

The VPDES permit regulation governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFOs). The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) permit regulation (9VAC25-32), the VPA General Permit Regulation for Confined Animal Feeding Operations (9VAC25-192), and the VPA General Permit Regulation for Poultry Waste Management (9VAC25-630). Concentrated Animal Feeding Operations currently covered under these regulations will be required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

9VAC25-31-30. Federal effluent guidelines.

A. The following federal regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 (2005)

Asbestos Manufacturing 40 CFR Part 427 (2005)

Battery Manufacturing 40 CFR Part 461 (2005)

Canned and Preserved Fruits and Vegetables 40 CFR Part 407 (2005)

Canned and Preserved Seafood 40 CFR Part 408 (2005)

Carbon Black Manufacturing 40 CFR Part 458 (2005)

Cement Manufacturing 40 CFR Part 411 (2005)

Centralized Waste Treatment 40 CFR Part 437 (2005)

Coal Mining 40 CFR Part 434 (2005)

Coil Coating 40 CFR Part 465 (2005)

Copper Forming 40 CFR Part 468 (2005)

Dairy Products 40 CFR Part 405 (2005)

Electrical and Electronic Components 40 CFR Part 469 (2005)

Electroplating 40 CFR Part 413 (2005)

Explosives Manufacturing 40 CFR Part 457 (2005)

Feedlots 40 CFR Part 412 ~~(2005)~~ (2009)

Ferroalloy Manufacturing 40 CFR Part 424 (2005)

Fertilizer Manufacturing 40 CFR Part 418 (2005)

Glass Manufacturing 40 CFR Part 426 (2005)

Grain Mills 40 CFR Part 406 (2005)

Gum and Wood Chemicals Manufacturing 40 CFR Part 454 (2005)

Hospitals 40 CFR Part 460 (2005)

Ink Formulating 40 CFR Part 447 (2005)

Inorganic Chemicals Manufacturing 40 CFR Part 415 (2005)

Iron and Steel Manufacturing 40 CFR Part 420 (2005)

Landfills 40 CFR Part 445 (2005)

Leather Tanning and Finishing 40 CFR Part 425 (2005)

Meat Products 40 CFR Part 432 (2005)

Metal Finishing 40 CFR Part 433 (2005)

Metal Molding and Casting 40 CFR Part 464 (2005)

Metal Products and Machinery 40 CFR Part 438 (2005)

Mineral Mining and Processing 40 CFR Part 436 (2005)

Nonferrous Metals 40 CFR Part 421 (2005)

Nonferrous Metal Forming 40 CFR Part 471 (2005)

Oil and Gas Extraction 40 CFR Part 435 (2005)

Ore Mining and Dressing 40 CFR Part 440 (2005)

Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 (2005)

Paint Formulating 40 CFR Part 446 (2005)

Paving and Roofing Materials 40 CFR Part 443 (2005)

Pesticide Chemicals 40 CFR Part 455 (2005)

Petroleum Refining 40 CFR Part 419 (2005)

Pharmaceutical Manufacturing 40 CFR Part 439 (2005)

Phosphate Manufacturing 40 CFR Part 422 (2005)

Photographic Processing 40 CFR Part 459 (2005)

Plastics Molding and Forming 40 CFR Part 463 (2005)

Porcelain Enameling 40 CFR Part 466 (2005)

Pulp, Paper and Paperboard 40 CFR Part 430 (2005)

Rubber Processing 40 CFR Part 428 (2005)

Secondary Treatment 40 CFR Part 133 (2005)

Soaps and Detergents 40 CFR Part 417 (2005)

Steam Electric Power Generation 40 CFR Part 423 (2005)

Sugar Processing 40 CFR Part 409 (2005)

Textile Mills 40 CFR Part 410 (2005)

Timber Products 40 CFR Part 429 (2005)

Toxic Pollutant Effluent Standards 40 CFR Part 129 (2005)

Transportation Equipment Cleaning 40 CFR Part 442 (2005)

Waste Combustors 40 CFR Part 444 (2005)

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

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.~~ The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 3 of 9VAC25-31-130.

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 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_5)

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 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_5).

(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.~~ For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 9 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D (2009), the requirements of 40 CFR 412.4(c) (2009), as applicable.

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

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:

(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_5 or $CBOD_5$) 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_5 or $CBOD_5$);

(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

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.

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-(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

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.

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 1×10^{-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

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 Sulfite 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 Sulfite 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.

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges or ~~potential~~ proposed discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. Who must seek coverage under a VPDES permit?

1. ~~All CAFO owners or operators must apply for a permit. All CAFO~~ The owners or operators ~~must~~ of a CAFO shall seek coverage under a VPDES permit~~, except as provided in subdivision 2 of this subsection~~ if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically, the CAFO owner or operator ~~must~~ shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator ~~must~~

shall submit an application for an individual permit to the board.

2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator ~~has received a notice from the board of a determination under 9VAC25-31-130 C 5~~ certifies to the board that the CAFO ~~has "no potential to discharge"~~ does not discharge or propose to discharge manure, litter or process wastewater.

3. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 I. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 I and 9VAC25-31-170.

4. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200 ~~E~~, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

~~5. "No potential to discharge" determinations for Large CAFOs.~~

~~a. Determination by the board. The board, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to surface waters. In making this determination, the board must consider the potential for discharges from both the production area and any land application areas. The board must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the five years prior to the date of the request submitted under subdivision C 5 b of this section. For purposes of this section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter or process wastewater to be added to surface waters under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this section only relates to the discharges of manure, litter and process wastewater covered by this section.~~

~~b. Information to support a "no potential to discharge" request. In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination within the time frame provided by the board and in accordance with subdivisions 6 and 7 of this subsection. Such information must include all the information specified in 9VAC25-31-100 F and 9VAC25-31-100 I 1. The board has discretion to require additional information to supplement the request, and may also gather additional information through onsite inspection of the CAFO.~~

~~c. Process for making a "no potential to discharge" determination. Before making a final decision to grant a "no potential to discharge" determination, the board must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet that includes, when applicable: a brief description of the type of facility or activity that is the subject of the "no potential to discharge" determination; a brief summary of the factual basis, upon which the request is based, for granting the "no potential to discharge" determination; and a description of the procedures for reaching a final decision on the "no potential to discharge" determination.~~

~~The board must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the board. The board must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.~~

~~d. Deadline for requesting a "no potential to discharge" determination. The owner or operator must request a "no potential to discharge" determination by the applicable~~

~~permit application date specified in subdivision C 6 of this subsection.~~

~~e. The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into surface waters is in violation of State Water Control Law even if it has received a "no potential to discharge" determination from the board. Any CAFO that has received a determination of "no potential to discharge", but that anticipates changes in circumstances that could create the potential for a discharge, should contact the Department of Environmental Quality, and apply for and obtain permit authorization prior to the change of circumstances.~~

5. No discharge certification option.

a. The owner or operator of a CAFO that meets the eligibility criteria in subdivision 5 b of this subsection may certify to the board that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under a VPDES permit pursuant to subdivision 1 of this subsection, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of subdivisions 5 b and c of this subsection, and subject to the limitations in subdivision 5 d of this subsection.

b. Eligibility criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO shall document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:

(1) The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO shall maintain documentation that demonstrates that:

(a) Any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) through (viii) (2009);

(b) Any part of the CAFO's production area that is not addressed by subdivision 5 b (1) (a) of this subsection is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and

(c) The CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b) (2009);

(2) The CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:

(a) The elements of subdivisions E 1 a through i of 9VAC25-31-200 and 40 CFR 412.37(c) (2009); and

(b) All site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to subdivision 5 b (1) (a) of this subsection; and

(3) The CAFO shall maintain documentation required by subdivision 5 b of this subsection either on site or at a nearby office, or otherwise make such documentation readily available to the department staff upon request.

c. Submission to the board. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator shall complete and submit to the board, by certified mail or equivalent method of documentation, a certification that includes, at a minimum, the following information:

(1) The legal name, address, and phone number of the CAFO owner or operator (see 9VAC25-31-100 B);

(2) The CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;

(3) A statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in subdivision 5 b of this subsection;

(4) The following certification statement: "I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of subdivision 5 of this subsection. I have read and understand the eligibility requirements of subdivision 5 b of this subsection for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by subdivision 5 c of this subsection. I also understand the conditions set forth in subdivisions 5 d, e and f of this subsection regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations."; and

(5) The certification shall be signed in accordance with the signatory requirements of 9VAC25-31-110.

d. Term of certification. A certification that meets the requirements of subdivisions 5 b and c of this subsection shall become effective on the date it is submitted, unless the board establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in subdivision 5 b of this subsection.

e. Withdrawal of certification.

(1) At any time, a CAFO may withdraw its certification by notifying the board by certified mail or equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the board. The CAFO does not need to specify any reason for the withdrawal in its notification to the board.

(2) If a certification becomes invalid in accordance with subdivision 5 d of this subsection, the CAFO shall withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in subdivision 1 of this subsection to seek permit coverage if it discharges or proposes to discharge.

f. Recertification. A previously certified CAFO that does not discharge or propose to discharge may recertify in accordance with subdivision 5 f (1) of this subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:

(1) The CAFO had a valid certification at the time of the discharge;

(2) The owner or operator satisfies the eligibility criteria of subdivision 5 b of this subsection, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;

(3) The CAFO has not previously recertified after a discharge from the same cause;

(4) The owner or operator submits to the board for review the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge in addition to submitting a certification in accordance with subdivision 5 c of this subsection; and

(5) Notwithstanding subdivision 5 d of this subsection, a recertification that meets the requirements of subdivisions 5 f (3) and (4) of this subsection shall only become effective 30 days from the date of submission of the recertification documentation.

i. Effect of certification.

(1) An unpermitted CAFO certified in accordance with subdivision 5 of this subsection is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to subdivisions 1 and 6 of this subsection, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act § 301(a) prohibition against unauthorized discharges from point sources.

(2) In any enforcement proceeding for failure to seek permit coverage under subdivisions 1 and 6 of this subsection that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in subdivision 5 c or 5 f (4) of this subsection within at least five years prior to the discharge, or withdrew its certification in accordance with subdivision 5 e of this subsection. Design, construction, operation, and maintenance in accordance with the criteria of subdivision 5 b of this subsection satisfies this burden.

6. When a CAFO must seek coverage under a VPDES permit.

a. Operations defined as CAFOs prior to April 14, 2003. For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with subdivision 7 of this subsection.

b. Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date. For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by ~~January 1, 2006~~ February 27, 2009.

c. Operations that become defined as CAFOs after April 14, 2003, but that are not new sources. For newly constructed AFOs and CAFOs that make changes to their

operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:

(1) For newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation; or

(2) For other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; ~~except that~~ or

(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until ~~April 14, 2006~~ February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

d. New sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.

e. Operations that are designated CAFOs. For operations designated as a CAFO in accordance with subsection B of this section, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.

~~f. "No potential to discharge." Notwithstanding any other provision of this section, a CAFO that has received a "no potential to discharge" determination in accordance with subdivision 5 of this subsection is not required to seek coverage under a VPDES permit. If circumstances materially change at a CAFO that has received a "no potential to discharge" determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the board and seek coverage under a VPDES permit within 30 days after the change in circumstances.~~

7. Duty to maintain permit coverage. No later than 180 days before the expiration of the permit, the permittee ~~must~~ shall submit an application to renew its permit, in accordance with 9VAC25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

a. The facility has ceased operation or is no longer a CAFO; and

b. The permittee has demonstrated to the satisfaction of the board that ~~there is no remaining potential for a~~ the CAFO will not discharge ~~of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from application areas~~ or propose to discharge upon expiration of the permit.

8. Procedures for CAFOs seeking coverage under a general permit.

a. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The board will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection I of 9VAC25-31-100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412 (2009). When additional information is necessary to complete the registration statement or clarify, modify, or supplement previously submitted material, the board may request such information from the owner or operator. If the board makes a preliminary determination that the registration statement meets the requirements of subsection I of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the board will notify the public of the board's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13 (2009). The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The board's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the board will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the board authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The board will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

9. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the board:

a. The CAFO owner or operator shall provide the board with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of subdivision 9 of this subsection.

b. The board will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412 (2009), and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the board will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the board will determine whether such changes are substantial changes as described in subdivision 9 c of this subsection.

(1) If the board determines that the changes to the terms of the nutrient management plan are not substantial, the board will make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the board determines that the changes to the terms of the nutrient management plan are substantial, the board will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13 (2009). The board may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The board will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the board incorporates the revised terms of the nutrient management plan into the permit, the board will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

10. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 8 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by

individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. Storm water point sources; or

b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9VAC25-31-100 I 1, including a topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C 8 of 9VAC25-31-130.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this subsection, the board may require the discharger to submit a permit application or other

information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or § 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or

disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under §§ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18VAC160-20). Not withstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm~~, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100 year, 24 hour storm~~. Agricultural storm water discharges as defined in subdivision C 4 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO ~~must~~ shall include:

1. Requirements to develop ~~and,~~ implement and comply with a nutrient management plan. At a minimum, a nutrient management plan ~~must~~ shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented ~~by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006, must have a nutrient management plan developed and implemented upon the date of permit coverage~~ and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate

agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

a. 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);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume; ~~and~~

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner~~.~~; and

h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c) (2009), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for

each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test

conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

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 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~~ Except for permits for concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with 9VAC25-31-130 B, 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 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.

9VAC25-31-400. Minor modifications of permits.

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IV of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

A. Correct typographical errors;

B. Require more frequent monitoring or reporting by the permittee;

C. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

D. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

E. 1. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

2. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

F. Incorporate conditions of an approved POTW pretreatment program (or a modification thereto that has been approved in accordance with the procedures in this chapter) as enforceable conditions of the POTW's permits.

G. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of subdivision C 9 of 9VAC25-31-130.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (9VAC25-31)

VPDES Sewage Sludge Permit Application Form with instructions (rev. 2000).

Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 (June 1980).

Virginia State Water Control Board Fish Farm Questionnaire (July 1996).

Application Form 2A - NPDES Form 2A Application for Permit to Discharge Municipal Wastewater, EPA Form 3510-2A (eff. 1/99).

Form 2B NPDES, Applications for Permit to Discharge Wastewater Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B (rev. 11/08).

Application Form 2C - Wastewater Discharge Information, Consolidated Permits Program, EPA Form 3510-2C (rev. February 1985).

Application Form 2D - New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D (September 1986).

Application Form 2E - Facilities Which Do Not Discharge Process Wastewater, EPA Form 3510-2E (September 1986).

Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with Industrial Activity, EPA Form 3510-2F (November 1990).

Local Government Ordinance Form (eff. 2000).

VA.R. Doc. No. R10-2203; Filed January 12, 2010, 2:09 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-200. Payday Lending (amending 10VAC5-200-100).**

Statutory Authority: §§ 6.1-458 and 12.1-13 of the Code of Virginia.

Effective Date: February 1, 2010.

Agency Contact: R. J. Face, Bureau of Financial Institutions Commissioner, 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 State Corporation Commission is adopting changes to its regulation governing the conduct of other business in payday lending offices. Subsection A of 10VAC5-200-100 defines the term "other business operator," recites the general restriction on the conduct of other business in payday lending offices, and identifies the specific types of businesses that are prohibited from being conducted from payday lending offices. Subsection B specifies additional findings that the commission will need to make before approving an application to conduct other business in a licensee's payday lending offices. Subsections C and D contain a few technical changes. Subsection E 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 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. Subsection L recites the commission's authority to impose any additional conditions that it deems necessary and in the public interest. Subsection M provides that the conditions set forth in the regulation will generally supersede the conditions established in the approval orders that were previously entered by the commission. The exception is found in subsection N, which relates to other businesses that are not identified in subsections F through K. Lastly, subsection O provides that the commission may take various forms of enforcement action if a licensee or other business operator fails to comply with applicable laws or conditions. In the final regulation, the commission added two conditions applicable to the conduct of open-end credit business from payday lending offices. The two conditions provide in pertinent part that (i) upon entering into an open-end credit plan secured by a borrower's motor vehicle, the other business operator must record its security interest with the Department of Motor Vehicles; and (ii) an other business operator is 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.

AT RICHMOND, DECEMBER 29, 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 ADOPTING A REGULATION

On August 4, 2009, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend 10 VAC 5-200-100, which relates to the conduct of other business in payday lending offices. The Order and proposed regulation were published in the Virginia Register of Regulations on August 31, 2009, posted on the Commission's website, and mailed to all licensed payday lenders and other interested parties. Licensed payday lenders and other interested parties were afforded the opportunity to file written comments or request a hearing on or before October 30, 2009.

Comments on the proposed regulation were filed by Title Cash of Virginia Inc.; Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance; F&L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans; the Center for Responsible Lending; the Virginia Poverty Law Center; Housing Opportunities Made Equal of Virginia, Inc.; and Virginians Against Payday Loans. Additionally, the Community Financial Services Association of America ("CFSA") filed comments on the proposed regulation and requested a hearing.

On November 13, 2009, the Commission entered an Order Scheduling Hearing, and on December 9, 2009, the Commission convened a hearing to consider the adoption of the proposed regulation. During the hearing regarding other business conducted in payday lending offices, there was considerable discussion regarding the conditions applicable to open-end loans secured by a security interest in a motor vehicle, as views were expressed on the two additional issues that the Commission raised in its Order to Take Notice; to wit, (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.

Douglas Densmore, on behalf of F&L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans, opined that these two provisions are inconsistent with the plain language in § 6.1-330.78 of the Code of Virginia, which provides only that a loan must be secured by a security interest in a motor vehicle. Since the legislature did not include these provisions in Chapters 784 and 860 of the 2009 Acts of Assembly, Mr. Densmore concluded that such provisions do not belong in the subject regulation.

David Clarke, representing Virginians Against Payday Loans, James Speer, on behalf of the Virginia Poverty Law Center, and Theodore Adams, representing the Center for Responsible Lending, were in favor of adding conditions to the regulation that would (i) require a licensee or third party making open-end loans to record its security interest with the Department of Motor Vehicles, and (ii) prohibit a licensee or third party 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.

It has been maintained that the proposed recordation requirement would promote the public interest by putting others on notice that a licensee or third party has a security interest in a motor vehicle. Such notice serves to protect existing lienholders, prospective lenders, and purchasers of motor vehicles who would otherwise be unaware of the security interest or the open-end loan that is secured by it. It has also be asserted that the proposed requirement would (i) avoid confusion among borrowers, lenders, and potential lienholders regarding their rights with respect to motor vehicles; (ii) ensure that licensees and third parties operating in payday lending offices are making open-end loans secured by a *bona fide* security interest in a motor vehicle; and (iii) foster greater awareness on the part of borrowers who might not otherwise fully recognize the potential consequences of failing to repay such loans.

In addition, it has been contended that prohibiting a licensee or third party 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 promotes the public interest because it reduces the opportunity for licensees or third parties to make loans to borrowers that they are incapable of repaying.

Staff counsel informed the Commission at the hearing that the Bureau believes that it could enforce the two auto title lending provisions in question provided that a licensee or third party making open-end loans is required by the regulation to maintain adequate supporting documentation in its loan files. Staff counsel also furnished the Commission with the results of a Bureau survey of its fellow state regulators in which the Bureau queried whether other states that allow auto title lending have either of these two provisions in their laws. Lastly, Staff counsel responded to the CFSA's written comments regarding the Bureau's proposed regulation.

NOW THE COMMISSION, having considered the proposed regulation, the written comments filed, the record herein, and applicable law, concludes that the proposed regulation should be modified to (i) require a licensee or third party making open-end loans to record its security interest with the Department of Motor Vehicles, and (ii) prohibit a licensee or third party 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 further concludes that the regulation should be modified to require

licensees or third parties to maintain adequate supporting documentation of compliance with these two provisions in their loan files. The Commission believes that these additional conditions are consistent with existing law and will promote the public interest.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, 10 VAC 5-200-100, as modified herein and attached hereto, is adopted effective February 1, 2010.

(2) This Order and the attached regulation shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Roy A. Hutcheson, Jr., Vice President, Title Cash of Virginia Inc., 513 Sparkman Drive, NW, Suite C, Huntsville, Alabama 35801; Patricia Dauterman, Director of Employee Development & Compliance, Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance, P.O. Box 2038, Cleveland, Tennessee 37320-2038; Carla Stone Witzel, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC, 233 East Redwood Street, Baltimore, Maryland 21202-3332; Jennifer Johnson, Senior Legislative Council, Center for Responsible Lending, P.O. Box 3638, Durham, North Carolina 27702-3638; James W. Speer, Executive Director, Virginia Poverty Law Center, 700 East Franklin Street, Suite 14T1, Richmond, Virginia 23219; Helen O'Beirne, Housing Opportunities Made Equal of Virginia, Inc., 700 East Franklin Street, Suite 3A, Richmond, Virginia 23219; David W. Clarke, LeClairRyan, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219; Tommy Moore, Executive Vice President, Community Financial Services Association of America, 515 King Street, Suite 300, Alexandria, Virginia 22314-3137; Douglas W. Densmore, Gentry, Locke, Rakes, & Moore, LLP, P.O. Box 40013, Roanoke, Virginia 24022-0013; Theodore F. Adams, III, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order and the attached regulation to all licensed payday lenders and other interested parties designated by the Bureau of Financial Institutions.

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~~ February 1, 2010], 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.

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.

[6. Upon entering into an open-end credit plan secured by a borrower's motor vehicle, the other business operator shall record its security interest with the Department of Motor Vehicles and maintain adequate supporting documentation thereof in its loan file.

7. The other business operator shall not enter 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 other business operator shall maintain adequate supporting documentation in its loan file that a borrower's motor vehicle was not subject to a purchase money security interest or other outstanding lien at the time the borrower entered into the open-end credit plan.]

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~~ February 1, 2010].

N. If prior to [~~December 1, 2009~~ February 1, 2010,] 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 January 6, 2010, 10:00 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-10, 12VAC5-110-20, 12VAC5-110-30, 12VAC5-110-50, 12VAC5-110-70, 12VAC5-110-80, 12VAC5-110-90, 12VAC5-110-100, 12VAC5-110-130; repealing 12VAC5-110-140).**

Statutory Authority: §§ 22.1-271.2, 32.1-12 and 32.1-46 of the Code of Virginia.

Effective Date: March 3, 2010.

Agency Contact: James Farrell, Director, Division of Immunization, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-8055, or email james.farrell@vdh.virginia.gov.

Summary:

The amendments (i) incorporate immunization requirements enacted by the legislature, (ii) reflect changes in the current immunization schedule recommended by the American Academy of Pediatrics and the American Academy of Family Physicians, and (iii) add registered nurses to the list of entities that can administer immunizations and can provide certification that required vaccines would be detrimental to a child's health.

Changes to the proposed regulation (i) increase the minimum number of doses of polio vaccine required for school entry to four and clarify the requirement that one dose must be administered on or after the fourth birthday in order to comply with recent Advisory Committee on Immunization Practices recommendations; (ii) add family day home or developmental center to the definition of "school"; (iii) change the measles, mumps, and varicella vaccine requirements to clarify that the second dose of each vaccine must be administered prior to kindergarten entry; and (iv) change conditional enrollment to clarify that the 180-calendar-day period applies only if more than two doses of hepatitis B vaccine is required.

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

Part I
Definitions

12VAC5-110-10. Definitions.

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

"Adequate immunization" means the immunization requirements prescribed under 12VAC5-110-70.

"Admit" or "admission" means the official enrollment or reenrollment for attendance at any grade level, whether full-time or part-time, of any student by any school.

"Admitting official" means the school principal or his designated representative if a public school; if a nonpublic school or child care center, the principal, headmaster or director of the school or center.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Compliance" means the completion of the immunization requirements prescribed under 12VAC5-110-70.

"Conditional enrollment" means the enrollment of a student for a period of 90 days contingent upon the student having received at least one dose of each of the required vaccines and the student possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period [, for hepatitis B vaccine only,] shall be 180 calendar days.

"Documentary proof" means an appropriately completed copy of ~~Form MCH 213B and the temporary certification form for Haemophilus influenzae type b disease where applicable,~~ Form MCH ~~213C or a computer generated~~

~~facsimile of Form 213C~~ 213F signed by a physician or his designee, registered nurse, or an official of a local health department. ~~The MCH 213C SUPPLEMENT~~ A copy of the immunization record signed or stamped by a physician or his designee, registered nurse, or an official of a local health department indicating the dates of administration including month, day, and year of the required vaccines, shall be acceptable in lieu of recording these dates on Form MCH ~~213C~~ 213F, as long as the ~~supplement~~ record is attached to Form MCH ~~213C~~ 213F and the remainder of Form MCH ~~213C~~ 213F has been appropriately completed. For a new student transferring from an out-of-state school, any immunization record, which contains the exact date (month/day/year) of administration of each of the required doses of vaccines ~~when indicated~~, is signed by a physician [~~of~~ or] his designee or registered nurse, and complies fully with the requirements prescribed under 12VAC5-110-70 shall be acceptable.

"Immunization" means the administration of a product licensed by the FDA to confer protection against one or more specific pathogens.

"Immunization schedule" means the schedule developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

"Physician" means any person licensed to practice medicine in any of the 50 states or the District of Columbia.

"School" means:

1. Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth;

2. Any private or ~~parochial~~ religious school that offers instruction at any level or grade from kindergarten through grade 12;

3. Any private or ~~parochial~~ religious nursery school or preschool, or any private or ~~parochial~~ religious child care center required to be licensed by this Commonwealth; [~~and~~]

4. Any preschool ~~handicapped~~ classes or Head Start classes operated by the school divisions within this Commonwealth [; and

5. Any family day home or developmental center].

"Student" means any person ~~less than 20 years of age who seeks admission to any Virginia school, or for whom admission to any Virginia school is sought by a parent or guardian~~ who seeks admission to a school, or for whom admission to a school is sought by a parent or guardian, and who will not have attained the age of 20 years by the start of the school term for which admission is sought.

"Twelve months of age" means the 365th day following the date of birth. For the purpose of evaluating records, vaccines administered up to four days prior to the first birthday (361 days following the date of birth) will be considered valid.

Part II
General Information

12VAC5-110-20. Purpose.

This chapter is designed to ensure that all students attending any ~~public, private or parochial~~ school ~~and all attendees of licensed child care centers~~ in the Commonwealth, are adequately immunized and protected against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, mumps, haemophilus influenzae type b, ~~and~~ hepatitis B, varicella, pneumococcal, and human papillomavirus disease as appropriate for the age of the student.

12VAC5-110-30. Administration.

A. The Board of Health has the responsibility for promulgating regulations pertaining to the implementation of the school immunization law and standards of immunization by which a child attending ~~a~~ any school ~~or child care center~~ may be judged to be adequately immunized.

B. The State Health Commissioner is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of the board.

C. The local health director is responsible for providing assistance in implementing this chapter to the school divisions in his jurisdiction and for providing immunizations to children determined not to be adequately immunized, who present themselves to the local health department for immunization.

D. The school principals of public schools and the principals, headmasters and directors of nonpublic schools ~~and child care centers~~ shall require each student attending their institutions to provide documentary proof of immunization against the diseases listed in 12VAC5-110-70.

[12VAC5-110-50. Application of the Administrative Process Act.

The provisions of the Virginia Administrative Process Act ~~, contained in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia,~~ (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the adoption, amendment, modification and revision of this chapter, and the conduct of all proceedings and appeals hereunder.]

Part III
Immunization Requirements

12VAC5-110-70. Immunization requirements.

Every ~~new~~ student ~~and every child attending a licensed child care center~~ enrolling in a school shall provide documentary

proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subdivisions, as appropriate for his age according to the immunization schedule. Spacing, minimum ages, and minimum intervals shall be in accordance with the immunization schedule. A copy of every student's immunization record shall be on file in his school record.

~~1. Diphtheria and Tetanus Toxoids and Pertussis Vaccine (DTP). For students less than seven years of age, a minimum of three doses of DTP,with one dose administered after the student's fourth birthday. If any of these three doses must be administered on or after the seventh birthday, Td (adult tetanus toxoid full dose and diphtheria toxoid reduced dose) should be used instead of DTP.~~

1. Diphtheria Toxoid. A minimum of four [~~or more~~] properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of diphtheria toxoid.

2. Tetanus Toxoid. A minimum of four [~~or more~~] properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of tetanus toxoid.

3. Acellular Pertussis Vaccine. A minimum of four [~~or more~~] properly spaced doses of acellular pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of pertussis vaccine.

~~2.~~ 4. Poliomyelitis Vaccine. A minimum of [~~three~~ four] doses of [~~all trivalent oral~~] poliomyelitis vaccine [~~(OPV) or all inactivated polio vaccine (IPV),~~] with one dose administered [on or] after the fourth birthday ~~or three doses of enhanced potency inactivated poliomyelitis vaccine (IPV), with one dose administered after the fourth birthday when OPV is contraindicated~~.

~~3.~~ 5. Measles (Rubeola) Vaccine. ~~For students enrolling in kindergarten or first grade on and after July 1, 1991, one~~ One dose of live measles vaccine administered at age 12 months or older, and a second dose administered [~~at four to six years of age or~~] prior to entering kindergarten ~~or first grade, whichever occurs first. The two doses must be administered at least one month apart. Students entering sixth grade on and after July 1, 1992, shall also have received two doses of live measles vaccine, with the first dose administered at age 12 months or older and the second dose at least one month after the first dose. All other students shall have received at least one dose of live measles vaccine. Any measles immunization received after 1968 should be considered to have been administered using a live virus vaccine.~~

~~4. German Measles (Rubella)~~ 6. Rubella Vaccine. A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

~~5.~~ 7. Mumps Vaccine. ~~A minimum of one~~ One dose of mumps virus vaccine administered at age 12 months or older and a second dose administered [~~at four to six years of age or~~] prior to entering kindergarten. ~~The requirement for mumps vaccine shall not apply to any child admitted for the first time to any grade level, kindergarten through grade 12 of a school prior to August 1, 1981.~~

~~6.~~ 8. Haemophilus Influenzae Type b (Hib) Vaccine. A complete series of Hib vaccine i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated. The number of doses administered shall be in accordance with current immunization schedule recommendations ~~of either the American Academy of Pediatrics or those of the U.S. Public Health Service~~. Attestation by the physician or his designee, registered nurse, or an official of a local health department on ~~the temporary form documenting immunizations against Hib,~~ that portion of Form MCH ~~213C~~ 213F pertaining to Hib vaccine~~, a computer generated facsimile of MCH 213C, or on the MCH 213C Supplement as defined in 12VAC5-110-10 under "documentary proof"~~ shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than ~~30~~ 60 months of age or for admission to any grade level, kindergarten through grade 12.

~~The dosage schedule for Hib vaccine varies with the manufacturer. The number of doses of vaccine required is also governed by the age at which immunization is initiated. Hence the reason why the requirements for Hib vaccine are prescribed in a manner different from those for the other vaccines.~~

~~7.~~ 9. Hepatitis B Vaccine. A minimum of three doses of hepatitis B vaccine for all children ~~born on or after January 1, 1994~~. The FDA has approved a two-dose schedule only for adolescents 11 through 15 years of age and only when the Merck brand (RECOMBIVAX HB) Adult Formulation Hepatitis B vaccine is used. The two RECOMBIVAX HB adult doses must be separated by a minimum of four months. The two dose schedule using the adult formulation must be clearly documented in the Hepatitis B section on Form MCH 213F.

10. Varicella (Chickenpox) Vaccine. All susceptible children born on and after January 1, 1997, shall be required to have one dose of chickenpox vaccine on or

after 12 months of age and a second dose administered [~~at four to six years of age or~~] prior to entering kindergarten.

11. Pneumococcal Conjugate Vaccine (PCV). A complete series of PCV, i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated. The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213F pertaining to PCV vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 24 months of age.

12. Human Papillomavirus (HPV) Vaccine. Three doses of properly spaced HPV vaccine for females, effective October 1, 2008. The first dose shall be administered before the child enters the sixth grade.

12VAC5-110-80. Exemptions from immunization requirements.

A. Religious and medical exemptions. No certificate of immunization shall be required of any student for admission to school if:

1. The student or his parent or guardian submits a Certificate of Religious Exemption (Form CRE 1), to the admitting official of the school to which the student is seeking admission. Form CRE 1 is an affidavit stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. ~~For a student enrolled before July 1, 1983, any document present in the student's permanent school record claiming religious exemption shall be acceptable.~~ The form is available on the Division of Immunization website at http://www.vdh.virginia.gov//Epidemiology/Immunization/requirements.htm; or

2. The school has written certification on ~~any~~ either of the documents specified under "documentary proof" in 12VAC5-110-10 from a physician, registered nurse, or a local health department that one or more of the required immunizations may be detrimental to the student's health. Such certification of medical exemption shall specify the nature and probable duration of the medical condition or circumstance that contraindicates immunization. ~~For a student enrolled before July 1, 1983, any document attesting to the fact that one or more of the required immunizations may be detrimental to the student's health shall be acceptable.~~

3. Upon the identification of an outbreak, potential epidemic, or epidemic of a vaccine-preventable disease in a public or private school, the commissioner has the authority to require the exclusion from such school of all children who are not immunized against that disease.

B. Demonstration of existing immunity. The demonstration in a student of antibodies against ~~either~~ rubeola ~~or,~~ rubella, or varicella in sufficient quantity to ensure protection of that student against that disease, shall render that student exempt from the immunization requirements contained in 12VAC5-110-70 for the disease in question. Such protection should be demonstrated by means of a serological testing method appropriate for measuring protective antibodies against rubeola ~~or,~~ rubella, or varicella respectively. Reliable history of chickenpox disease diagnosed or verified by a health care provider shall render students exempt from varicella requirements.

C. HPV vaccine. Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the HPV vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the board.

Part IV
Procedures and Responsibilities

12VAC5-110-90. Responsibilities of admitting officials.

A. Procedures for determining the immunization status of students. Each admitting official or his designee shall review, before the first day of each school year, the school medical record of every new student seeking admission to his school, and that of every student enrolling in grade six for compliance with the ~~measles vaccine~~ requirements prescribed in [~~subdivisions 1, 2, and 3 of~~] 12VAC5-110-70 ~~3~~. Such review shall determine into which one of the following categories each student falls:

1. Students whose immunizations are adequately documented and complete in conformance with 12VAC5-110-70. Students with documentation of existing immunity to measles, rubella, or varicella as defined in 12VAC5-110-80 B shall be considered to be adequately immunized for such disease.

2. Students who are exempt from the immunization requirements of 12VAC5-110-70 because of medical contraindications or religious beliefs provided for by 12VAC5-110-80.

3. Students whose immunizations are inadequate according to the requirements of 12VAC5-110-70.

4. Students without any documentation of having been adequately immunized.

B. Notification of deficiencies. Upon identification of the students described in subdivisions A 3 and 4 of ~~12VAC5-110-90 A~~ this section, the admitting official shall notify the ~~student or his~~ parent or guardian of the student:

1. That there is no, or insufficient, documentary proof of adequate immunization in the student's school records.

2. That the student cannot be admitted to school unless he has documentary proof that he is exempted from immunization requirements pursuant to 12VAC5-110-70.

3. That the student may be immunized and receive certification by a licensed physician, registered nurse, or an official of a local health department.

4. How to contact the local health department to receive the necessary immunizations.

C. Conditional enrollment. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 calendar days, during which time that student shall complete the immunizations required under 12VAC5-110-70. ~~The following table contains a suggested plan for ensuring the completion of these requirements within the 90 day conditional enrollment period.~~ If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period [, for hepatitis B vaccine only,] shall be 180 calendar days. If a student is a homeless child or youth and does not have documentary proof of necessary immunizations or has incomplete immunizations and is not exempted from immunization as described in 12VAC5-110-80, the school administrator shall immediately admit such student and shall immediately refer the student to the local school division liaison, who shall assist in obtaining the documentary proof of, or completing, immunizations. The admitting official should examine the records of any conditionally enrolled student at regular intervals to ensure that such a student remains on schedule with his plan of completion.

~~A SUGGESTED PLAN FOR ENSURING COMPLIANCE~~

~~TIME~~	~~ACTION STEP~~
~~Day 0~~	~~Conditional enrollment period starts. If student has not received first dose(s) of required vaccines, exclude student.~~
~~Day 1 to Day 42~~	~~Student should have received second dose(s) of required vaccines.~~
~~Day 43 to Day 88~~	~~Student should have received third dose(s) of required vaccines.~~
~~Day 89 and Day 90~~	~~Confirm that immunizations are completed; exclude children not in compliance.~~

D. Exclusion. The admitting official shall, at the end of the conditional enrollment period, exclude any student who is not in compliance with the immunization requirements under 12VAC5-110-70 and who has not been granted an exemption under 12VAC5-110-80 until that student provides documentary proof that his immunization schedule has been completed, unless documentary proof~~,~~ that a medical contraindication developed during the conditional enrollment period~~,~~ is submitted.

E. Transfer of records. The admitting official of every school shall be responsible for sending a student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which a student is transferring within 30 days of his transfer to the new school.

F. Report of student immunization status. Each admitting official shall, within 30 days of the beginning of each school year or entrance of a student, or by October 15 of each school year, file with the State Health Department through the health department for his locality, a report summarizing the immunization status of the students in his school. This report shall be filed using the web-enabled reporting system or on Form SIS 1, the Student Immunization Status Report, and shall contain the number of students admitted to that school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted. The report for students entering the sixth grade shall include the number with a booster dose of tetanus, diphtheria, or pertussis containing vaccine within the last five years.

G. Each admitting official shall ensure that the parent or guardian of a female to be enrolled in the sixth grade receives educational materials describing the link between the human papillomavirus and cervical cancer. Materials shall be approved by the board and provided to the parent or guardian prior to the child's enrollment in the sixth grade.

12VAC5-110-100. Responsibilities of physicians and local health departments.

A. Documentary proof for students immunized in Virginia. Every physician, registered nurse, and local health department providing immunizations to a child shall provide documentary proof, as defined in 12VAC5-110-10, to the child or his parent or guardian of all immunizations administered.

B. Documentary proof for out-of-state students. For a student transferring from an out-of-state school to a Virginia school, the admitting official may accept as documentary proof any immunization record for that student ~~which~~ that is signed by a physician or [registered] nurse and that contains the exact date (month/day/year) of administration of each of the required doses of vaccines when indicated and ~~which~~ that complies fully with the requirements prescribed under 12VAC5-110-70. Any immunization record ~~which~~ that does

not contain the signature of a physician or a nurse and does not contain the month/day/year of administration of each of the required vaccine doses shall not be accepted by the admitting official as documentary proof of adequate immunization ~~with the exception of immunization against Hib~~. Such a student's record shall be evaluated by an official of the local health department who shall determine if that student is adequately immunized in accordance with the provisions of 12VAC5-110-70. Should the local health department determine that such a student is not adequately immunized, that student shall be referred to his private physician or local health department for any required immunizations.

12VAC5-110-130. Responsibility of parent to have a child immunized.

In accordance with § 32.1-46 of the Code of Virginia, ~~"~~the parent, guardian or person standing in loco parentis of each child within this Commonwealth shall ~~cause such child to be~~ ensure such child is immunized ~~by vaccine against diphtheria, tetanus, whooping cough and poliomyelitis and hepatitis B before such child attains the age of one year, against Haemophilus influenzae type b before he attains the age of 30 months, and against measles (rubeola), German measles (rubella) and mumps before such child attains the age of two years. All children shall also be required to receive a second dose of measles (rubeola) vaccine in accordance with the regulations of the board. The board's regulations shall require that all children receive a second dose of measles (rubeola) vaccine prior to first entering kindergarten or first grade and that all children who have not yet received a second dose of measles (rubeola) vaccine receive such second dose prior to entering the sixth grade.~~" in accordance with the immunization schedule.

The parent or guardian of a child who is home instructed shall ensure such child is immunized in accordance with § 22.1-271.4 of the Code of Virginia.

Penalties for noncompliance shall be in accordance with § 32.1-27 of the Code of Virginia.

[12VAC5-110-140. ~~General penalties.~~ (Repealed.)

~~In accordance with § 32.1-27 of the Code of Virginia, "any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the board or commissioner of any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified."~~]

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 (12VAC5-110)

Certificate of Religious Exemption, ~~CRE-1 (Eff.~~ CRE-1, Rev. 00/92 (eff. 7/83).

School Entrance Physical Examination and Immunization Certification, ~~MCH-213C (Rev. 10/91)~~ MCH 213F (rev. 04/07).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-110)

[~~2009~~ 2010] Recommended Immunization Schedule for Persons Aged 0 through 6 Years, U.S. Department of Health and Human Services.

[~~2009~~ 2010] Recommended Immunization Schedule for Persons Aged 7 through 18 Years, U.S. Department of Health and Human Services.

VA.R. Doc. No. R08-1339; Filed January 8, 2010, 2:40 p.m.

Final Regulation

Title of Regulation: **12VAC5-508. Regulations Governing the Virginia Physician Loan Repayment Program (adding 12VAC5-508-10 through 12VAC5-508-270).**

Statutory Authority: § 32.1-122.6:1 of the Code of Virginia.

Effective Date: March 3, 2010.

Agency Contact: Kathy Wibberly, PhD, Division Director, Office of Minority Health and Public Health Policy, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7426, FAX (804) 864-7440, or email kathy.wibberly@vdh.virginia.gov.

Summary:

This regulation establishes the eligibility criteria for the Virginia Physician Loan Repayment Program for primary care physicians and psychiatrists. It explains that recipients must practice (i) in a designated medically underserved area as identified by the Board of Health, (ii) in a federal Health Professional Shortage Area (HPSA) in Virginia designated by the Health Resources and Services Administration, or (iii) at an approved state or local institution. It also sets penalties for a recipient's failure to fulfill the practice requirements of the program. Only technical changes designed to ensure consistency of language have been made since publication of the proposed regulation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 508
REGULATIONS GOVERNING THE VIRGINIA PHYSICIAN LOAN REPAYMENT PROGRAM

[~~Article 1~~ Part I]
Definitions and General Information

12VAC5-508-10. Definitions.

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

["Accredited residency" means a graduate medical education program in family practice medicine, general internal medicine, pediatric medicine, obstetrics and gynecology, or psychiatry accredited by the Liaison Committee on Graduate Medical Education.]

"Board" or "Board of Health" means the State Board of Health.

"Commercial loans" means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and either financial or credit institutions that are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the state in which the lender has its principal place of business.

"Commissioner" means the State Health Commissioner.

"Department" means Virginia Department of Health.

"Full-time" means at least 40 hours per week for 45 weeks per year.

"Health Professional Shortage Area" or "HPSA" means a geographic area in Virginia designated by the Bureau of Primary Health Care, Health Resources [and Services] Administration as medically underserved in accordance with the procedures of the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part 5.2).

[~~"Medically underserved area" means a geographic area in Virginia designated by the State Board of Health in accordance with the rules and regulations for the identification of medically underserved areas, § 32.1-122.5 of the Code of Virginia, or designated as federal health professional shortage area (HPSA) in Virginia, designated by the Bureau of Primary Health Care, Health Resources Administration in accordance with the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part 5.2).~~]

"Participant" or "loan repayment participant" means an eligible primary care physician [~~,~~ or] an eligible psychiatrist [~~, or an eligible medical student~~] who enters into a contract with the commissioner and participates in the loan repayment program.

"Penalty" means the amount of money equal to twice the amount of all monetary loan repayment paid to the loan repayment participant, less any service obligation completed.

"Practice" means the practice of medicine by a recipient in one of the designated primary care specialties in a specific geographic area determined to be fulfillment of the recipient's loan repayment obligation.

"Primary care" means the specialties of family practice medicine, general internal medicine, pediatric medicine, obstetrics and gynecology, and psychiatry.

"Reasonable educational expenses" means the costs of education, exclusive of tuition, that are considered to be required by the school's degree program or an eligible program of study, such as fees for room, board, transportation and commuting costs, books, supplies, educational equipment and materials, and clinical travel, which was a part of the estimated student budget of the school in which the participant was enrolled.

"State or local institution" means any Virginia state agency or local government agency that may require services of a primary care practitioner. This includes, but is not limited to, the Department of Health [~~:~~] the Department of [~~Mental Health, Mental Retardation, and Substance Abuse~~ Behavioral Health and Developmental] Services [~~:~~] the Department of Corrections [~~:~~ the Department of Juvenile Justice,] and local community services boards.

["Virginia medically underserved area" or "VMUA" means a geographic area in Virginia designated by the State Board of Health in accordance with the Rules and Regulations for the Identification of Medically Underserved Areas (12VAC5-540) or § 32.1-122.5 of the Code of Virginia, or designated as a federal health professional shortage area (HPSA) in Virginia by the Bureau of Primary Health Care, Health Resources and Services Administration in accordance with the procedures of the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part 5.2).]

12VAC5-508-20. General information and purpose of chapter.

These regulations set forth the criteria for eligibility for the Virginia Physician Loan Repayment Program [~~for physician's and medical students~~]; the general terms and conditions applicable to the obligation of each loan repayment recipient to practice in a state or local institution or a medically underserved area of Virginia, as identified by the Board of Health by regulation or a federal [~~health professional shortage area (~~] HPSA [~~)~~] in Virginia, designated by the Bureau of Primary Health Care, Health Resources [and Services] Administration; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Physician Loan Repayment Program.

The purpose of the Virginia Physician Loan Repayment Program is to improve the recruitment and retention of primary care practitioners in underserved areas of Virginia and in state and local institutions. A limited number of loan repayment participation contracts will be signed with participants in return for service in a designated Virginia Medically Underserved Area (VMUA) or [~~health professional shortage area (~~] HPSA [~~)~~], and targeted at practitioners located in non-profit community-based or hospital-based primary care centers. Private-for-profit entities will be eligible depending on the insurance status of the patient population. State and local institutions are eligible. Loan repayment benefits are to be used to repay outstanding qualifying medical educational loans and are based on the availability of funds.

12VAC5-508-30. Compliance with the Administrative Process Act.

Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia (the Administrative Process Act) governs the promulgation and administration of this chapter and applies to any appeal of a case decision made pursuant to or based upon this chapter.

[~~Article 2~~ Part II]
Administration of the Virginia Physician Loan Repayment Program

12VAC5-508-40. Administration.

The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from these regulations shall be considered on an individual basis [by the board in regular session].

12VAC5-508-50. Eligible applicants.

Eligible applicants for the Virginia Physician Loan Repayment Program must:

1. Be a citizen of the United States;

2. Be an allopathic (M.D.) [~~,~~ or] osteopathic (D.O.) physician [~~or medical student pursuing a degree as an M.D. or D.O.,~~] who [~~has~~ is enrolled in the final year of an approved residency program in allopathic medicine, osteopathic medicine, psychiatry, or already in practice; and who will have] completed post-graduate training [in an accredited residency] in specialties of family practice medicine, general internal medicine, general pediatrics, obstetrics/gynecology, osteopathic general practice or psychiatry [when the period of obligated service begins]. Note that obstetrics/gynecology practitioners must provide prenatal care and obstetric service to be eligible for the Virginia Physician Loan Repayment Program. Practitioners who practice only gynecology are not eligible to participate in the loan repayment program;

3. Have a valid unrestricted Virginia license to practice medicine, a copy of which shall be furnished to the Virginia Physician Loan Repayment Program;

[~~4. Be enrolled in the final year of an approved residency program in allopathic medicine, osteopathic medicine, psychiatry or already in practice;~~

~~5.~~ 4.] Have submitted a completed application to participate in the Virginia Physician Loan Repayment Program; and

[~~6.~~ 5.] Have signed and submitted a written contract agreeing to repay educational loans and to serve for the applicable period of obligated service in an area of defined need.

12VAC5-508-60. Application requirement and restrictions.

The applicant must submit a completed application for loan repayment on a form provided by the Virginia Physician Loan Repayment Program between the dates of January 1 and May 1 of the year in which the applicant intends to initiate practice in a medically underserved area. The applicant must agree to serve for not less than two years and up to four years.

12VAC5-508-70. Selection criteria.

Applicants shall be competitively reviewed and selected for participation in the Virginia Physician Loan Repayment Program based upon the following criteria:

1. Commitment to serve. The individual's stated commitment to serve in a designated medically underserved area of Virginia or in a state or local institution.

2. Virginia residents/graduates. Preferential consideration will be given to individuals who are or have been Virginia residents, graduates of Virginia medical schools (verification will be obtained by the Virginia Physician Loan Repayment Program), or natives of rural [~~and~~ or] designated medically underserved areas.

3. Availability for service. Individuals who are immediately eligible and available for service will be given higher consideration.

4. Length of proposed commitment. Preferential consideration will be given to individuals who commit to longer periods of service.

5. Selection for participation. All of an individual's professional qualifications and competency to practice in an underserved area will be considered, including board eligibility or [specialty] certification [~~in his specialty~~], professional achievements, and other indicators of competency received from supervisors, program directors, [~~etc~~ or other individuals who have agreed to enter into an employment contract with the individual].

6. No other obligations. Individuals shall have no other obligation for health professional service to the federal government or state government unless such obligation will be completely satisfied prior to the beginning of service under the Virginia Physician Loan Repayment Program.

12VAC5-508-80. Loan repayment amount.

The amount that the Commonwealth agrees to repay will depend upon availability of funds and the applicant's indebtedness, but no amount will exceed the total indebtedness. For each year of participation, the Commonwealth will repay loan amounts according to the following schedule: two years of service will receive up to $50,000 (minimum requirement); three years of service will receive up to $85,000; and four years of service will receive up to $120,000.

12VAC5-508-90. Loans qualifying for repayment.

Based on the availability of funds, the loan repayment program will pay for the cost of education necessary to obtain a medical degree. The program will pay toward the outstanding principal, interest, and related expense of federal, state, or local government loans (not to include repayment of the Virginia Medical Scholarship Program) and commercial loans obtained by the participant for:

1. School tuition and required fees incurred by the participant;

2. Other reasonable educational expenses, including fees, books and laboratory expenses; and

3. Reasonable living expenses.

12VAC5-508-100. Repayment restrictions.

[A.] The following financial debts or service obligations are not qualified for repayment by the loan repayment program:

1. Public Health Service Physician Shortage Area Scholarship;

2. Public Health and National Health Service Corps Scholarship Training Program;

3. Indian Health Service Scholarship Program;

4. Armed Forces Health Professions Scholarship Programs;

5. National Health Service Corps Scholarship Program financial damages or loans obtained to repay such damages;

6. Indian Health Corps Scholarship or loans obtained to repay such damages;

7. Financial damages or loans obtained to repay damages incurred as a result of breach of contract with any other federal, state, local agency or commercial institution;

8. Loans for which documentation verifying the educational use of the loans is not available or is not sufficient;

9. Loans or part of loans obtained for educational or personal expenses during the participant's education that exceed the "reasonable" level, as determined by the school's standard budget in the year the loan was made;

10. Loans that have been repaid in full, and loans that incur their own obligation for service which has not yet been performed;

11. Loans from friends and relatives; and

12. The Virginia Medical Scholarship Program.

[B.] The Department of Health will be the final authority in determining qualifying educational loans.

12VAC5-508-110. Release of information.

Applicants shall agree to execute a release to allow the board access to loan records, credit information, and information from lenders necessary to verify eligibility and to determine loan repayments. To facilitate the process, applicants should submit pay-off statements from each lending institution.

Participants who have consolidated qualifying loans with other loans may be asked to submit other documentation, such as copies of original loan applications, to verify the portion of the loan that qualifies for repayment.

The applicant is required to submit all requested loan documentation prior to approval by the Commonwealth.

12VAC5-508-120. Service obligation sites.

All sites eligible for loan repayment participation will be located in a designated medically underserved area of the Commonwealth or in a state or local institution. All placements must be to an approved entity providing primary health care within the designated VMUA or HPSA or a state or local institution. Each applicant will be provided with a list of preapproved areas.

12VAC5-508-130. Effective date for start of service.

Applicants become participants in the loan repayment program only when the applicant and the commissioner or [~~his~~] designee have signed the loan repayment program contract. The effective start date of the obligated service under contract is the date of employment or the date of the commissioner's signature, whichever is later.

If the contracted participant fails to begin or complete the period of professional practice to which he has agreed, the participant will be subject to the financial damages specified in the contract.

12VAC5-508-140. Repayment policy.

It will be the responsibility of the participant to negotiate with each lending institution for the terms of the educational loan repayments. Each lending institution must certify that the participant's debt is a valid educational loan prior to payment by the loan repayment program. Any penalties associated with early repayment shall be the responsibility of the participant.

12VAC5-508-150. Disbursement procedure.

In an effort to assist loan repayment participants in reducing their educational debt with as little interest expense as is possible, the Virginia Physician Loan Repayment Program will disburse the funds in a lump sum payment. A participant will be paid one lump sum payment up to $50,000 the first year for the minimum two-year commitment within 45 days of execution of the contract. If a participant commits to a service obligation greater than two years, he will be paid a lump sum payment up to $35,000 the following year depending on availability of funds, approximately 45 days after the beginning of the subsequent year. The maximum number of years to which a participant can commit is four years.

12VAC5-508-160. Compensation during service.

Each participant is responsible for negotiating his own compensation package directly with the site where he will provide primary health care services.

12VAC5-508-170. Tax implications.

Loan repayments are income and, therefore, are taxable by the United States Internal Revenue Service. It will be the responsibility of each participant to report the loan repayment award when preparing his tax return. Program participants should [~~seek the advice of~~ consider working with] a qualified tax advisor regarding this matter.

The [~~board~~ department] will provide a form 1099 to applicants awarded loan repayment.

12VAC5-508-180. Monitoring during service.

Monitoring of the service by participants shall be conducted on an ongoing basis by department staff. Service verification forms will be submitted by the participant to the department semi-annually (every six months), countersigned by a representative of the service site, [~~e.g., the~~ to include, but not limited to, a] medical director, human resource coordinator, [or] chief executive officer, [~~etc.,~~] certifying continuous full-time service by [~~participants~~ the participant].

The participant is required to maintain practice records in a manner that will allow the department to readily determine if the individual has complied with or is complying with the terms and conditions of the participation agreement. Department staff reserves the right to conduct a regular survey to ensure that all participants are maintaining practices that accept Medicare and Medicaid assignment and do not discriminate based on the patient's ability to pay.

12VAC5-508-190. Change of practice site.

Should any participant find that he is unable to fulfill the service commitment at the loan repayment site to which he has committed to practice, he may be placed in breach of contract status or he may be expected to continue service at another approved loan repayment site within six months from departure from the previous site. This site will be selected in consultation with the participant and with the approval of the commissioner.

In the event of a dispute between the participant and the site, every effort will be made to resolve the dispute before reassignment will be permitted.

12VAC5-508-200. Terms of service.

The following are the terms of service for the loan repayment program:

1. The participant shall contract to provide a minimum of two years with a maximum of up to four years in whole year increments. Additional service beyond the two-year commitment is dependent upon the availability of state funds for the Virginia Physician Loan Repayment Program. An existing contract may be renewed for one year at a time up to a maximum of four years, as funds become available;

2. The participant shall begin service within 12 months from entering into the contract;

3. The participant shall provide full-time service of at least 40 hours per week for 45 weeks per year to allow for continuing education, holidays, and vacation. The minimum 40-hour week must not be performed in less than four days per week, with no more than 12 hours of work performed in any 24-hour period. Time spent in an "on-call" status will not count toward the 40-hour week. Any exceptions to the "on-call" provisions of this section must be approved in advance by the commissioner prior to placement.

4. No period of internship, residency, or other advanced clinical training may count toward satisfying a period of obligated service under this loan repayment program.

12VAC5-508-210. Conditions of practice.

A. The participant must agree to provide health [~~service~~ services] without discrimination regardless of a patient's ability to pay. Payments from Medicare and Medicaid [~~or both~~] must be accepted by the designated service site.

B. The participant must agree to comply with all policies, rules, and regulations of the designated service site.

[~~Article 3~~ Part III]
Contract

12VAC5-508-220. Loan repayment contract.

Prior to becoming a participant in the Virginia Physician Loan Repayment Program, the applicant shall enter into a contract with the commissioner agreeing to the terms and conditions upon which the loan repayment is granted. The contract shall:

1. Include the terms and conditions to carry out the purposes and intent of this program;

2. Provide that the participant will be required to provide primary health care services at an approved site in a designated medically underserved area or in a state or local institution for a minimum period of two years. A four-year commitment is required in order to be eligible for the maximum amount of loan repayment, depending upon availability of funds. All loan repayment program participation will be contingent upon continuous, full-time practice in a medically underserved area of Virginia or in a state or local institution;

3. Provide for repayment of all amounts paid, plus interest, and penalties, less any service time, as set out in the contract in the event of breach of the contract;

4. Be signed by the applicant; and

5. Be signed by the commissioner or his designee.

12VAC5-508-230. Breach of contract.

The following may constitute breach of contract:

1. Participant's failure to begin or complete his term of obligated service under the terms and conditions of the Virginia Physician Loan Repayment contract, regardless of the length of the agreed period of obligated service;

2. Participant's falsification [~~or~~ and/or] misrepresentation of information [~~or misrepresentation of information~~] on the program application or verification forms or other required [~~document~~ documents];

3. Participant's employment being terminated for good cause, as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the participant's control (e.g., closure of site), the participant must transfer to another approved site in a designated medically underserved area or in a state or local institution within six months of termination. Failure of participant to accept such a transfer site shall be deemed to be a breach of the contract; and

4. Participant's failure to provide all reasonable, usual and customary full-time health care service for at least 45 weeks per year.

12VAC5-508-240. Collection procedure.

If any person who has received funds and has been declared in breach of contract under this program at any time becomes an employee of the Commonwealth or any of its agencies, he shall be deemed to have agreed, as a condition of employment, to voluntarily or involuntarily [~~withholding~~ have] his wages [withheld] to repay the default damages.

Failure of a participant to make any repayment of the penalty when it is due shall be cause for the commissioner to refer the debt to the Attorney General of the Commonwealth of Virginia for collection. The recipient shall be responsible for any costs of collection as may be provided in Virginia law.

12VAC5-508-250. Waiver and suspension or both.

Participants have the obligation to complete full-time continuous service for the period of their entire commitment. Under unusual circumstances (e.g., illness), a participant may request that the commissioner agree to a postponement of the service obligation. This postponement, if granted, will not relieve the participant of the responsibility to complete the remaining portion of the obligation. Such postponement will not be permitted as a matter of course, but may be allowed in the most compelling cases.

Waiver of the default provisions may be considered if the participant suffers from a physical or mental disability that occurs after the participant's commitment and results in the total and permanent inability of the participant to perform the obligated service (as determined by the commissioner), or if the participant dies during the period of obligated service.

12VAC5-508-260. Cash reimbursement and penalty.

Regardless of the length of the agreed period of obligated service, participants who serve less than the two-year minimum (but at least one year) are liable to pay monetary damages to the Commonwealth of Virginia as stated in the contract. The default penalty will require the participant to repay twice the total amount of the award received. (For example, if a recipient owes $50,000, he would have to repay [~~at~~ a] total of $100,000.)

[~~Article 4~~ Part IV]
Records and Reporting

12VAC5-508-270. Reporting requirements.

[Reporting requirements of the loan repayment participant are as follows:]

[~~A.~~ 1.] Each participant shall at any time provide information as required by the commissioner to verify compliance with the practice requirements of the Virginia Physician Loan Repayment Program, e.g., verification of employment, see 12VAC5-508-180.

[~~B.~~ 2.] Each participant shall promptly notify the commissioner, in writing, within 30 days before any of the following events occur:

[~~1.~~ a.] Participant changes name;

[~~2.~~ b.] Participant changes address;

[~~3.~~ c.] Participant changes practice site;

[~~4.~~ d.] Participant no longer intends to fulfill service obligation as a primary care health care provider in a designated medically underserved area; or

[~~5.~~ e.] Participant ceases to practice as a physician.

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 (12VAC5-508)

[2009-2010] Application Form [(rev. 1/10)].

[~~Application for Recruitment (Site Application).~~

~~Authorization of Release Form.~~

~~Certification.~~

~~Certification of Nondelinquent Status.~~

~~Verification of Employment.~~

~~Documents Checklist.~~

~~Virginia Loan Repayment Program Contract.~~

~~Health Professional Shortage Areas (HPSAs) and Virginia Medically Underserved Areas (VMUAs) as of November 16, 2001.~~]

VA.R. Doc. No. R01-106; Filed January 13, 2010, 10:41 a.m.

Proposed Regulation

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-10; adding 12VAC5-590-125).**

Statutory Authority: §§ 32.1-12, 32.1-170 and 32.1-174.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 2, 2010.

Agency Contact: Robert A. K. Payne, Compliance Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia provides that State Board of Health may promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the commissioner, or the department.

Section 32.1-170 specifically establishes that the purpose for the board's regulations governing drinking water is to protect public health and to promote public welfare. This section authorizes the board to adopt minimum health standards for pure water, and any other provisions necessary to guarantee a supply of pure water for the Commonwealth's citizens.

Section 32.1-174.4 requires the State Board of Health to promulgate regulations that create mechanisms or enforcement options for eliminating chronically noncompliant waterworks.

Chapters 648 and 774 of the 2007 General Assembly require the department to implement a program to identify chronically noncompliant waterworks and create mechanisms or enforcement options for eliminating chronically noncompliant waterworks. (Note: An ancillary part of the General Assembly action was the amendment of § 15.2-2146, Powers of localities to acquire certain waterworks system. This is not part of this regulatory proposal.)

Purpose: This action is the result of a Joint Legislative Audit and Review Commission study and subsequent General Assembly action. The proposed regulation identifies chronically noncompliant waterworks, requires written notification to all customers and to the county officers in which the waterworks is located, and prescribes specific action a waterworks owner must take to bring the waterworks into compliance with Waterworks Regulations or to eliminate the waterworks to protect public health.

Substance: 12VAC5-590-10 includes the Code of Virginia definition of a chronically noncompliant waterworks into the body of the Waterworks Regulations.

12VAC5-590-125 allows the State Health Commissioner to issue an order to the owner of a chronically noncompliant waterworks requiring the waterworks owner to submit: (i) a schedule for returning the waterworks to compliance and (ii) a comprehensive business plan (§ 32.1-172 B of the Code of Virginia).

If the waterworks owner is financially incapable of performing any necessary capital improvements, the waterworks owner is required to make good faith applications to appropriate financial institutions for funding to complete the improvements. The waterworks owner is also required to notify each consumer of the commissioner's order including a copy of the compliance schedule.

Additionally, the commissioner is required to send a copy of the order to the chief administrative officer of the locality in which the waterworks is located.

The waterworks owner is subject to the civil fines provided in Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia.

Issues: The primary issue addressed by this proposed regulation is to attempt to protect the health of consumers served by a waterworks in Virginia that has been determined to be chronically noncompliant. The proposed regulation will require recalcitrant waterworks owners to bring the chronically noncompliant waterworks into compliance with the Waterworks Regulations.

The State Health Commissioner will inform the local government in which the chronically noncompliant waterworks is located, that it may initiate action, if desired by the locality, to secure ownership of the waterworks and assume operation in compliance with the Waterworks Regulation.

This proposed regulation poses no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 648 and 774 of the 2007 General Assembly, the State Board of Health proposes to establish mechanisms and enforcement options to eliminate chronically noncompliant waterworks and adopt the statutory definition provided in the same legislation.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. Pursuant to Chapters 648 and 774 of the 2007 General Assembly, the State Board of Health proposes to establish mechanisms and enforcement options to eliminate chronically noncompliant waterworks and adopt the statutory definition provided in the same legislation.

Waterworks that provide water for drinking or domestic use are required to maintain clean and reliable supply of water. This goal is accomplished by requiring the owner of such systems to monitor the water quality periodically, to report the results to the Virginia Departement of Health (VDH), and to provide pertinent information to the customers. Once a problem identified with a waterworks, VDH starts to remedy the problem. While majority of problems have been resolved successfully, VDH reports that there have been about eight cases where the owner have failed to successfully remediate the problem for a long time despite repeated efforts. In response to the citizen concerns, legislation enacted in 2007 directed the board to establish a program to improve compliance.

The board proposes to require the owner of a chronically noncompliant waterworks to submit a compliance schedule and a comprehensive business plan to return the system to compliance. If the owner does not have the financial resources, he or she will be required to make good faith applications to financial institutions to fund needed improvements. The owner will also be required to send the copy of the commissioner's order and a copy of the compliance schedule to the customers. The commissioner will also send a copy of the order to the local government where the waterworks is located.

While there is likely to be some additional administrative costs associated with issuing an order, reviewing the compliance plan, and notifying the locality, VDH expects those costs to be minimal. Similarly, owners are expected to incur some administrative costs associated with drafting a compliance plan, distributing notices to customers, and making good faith applications to financial institutions if needed.

On the other hand, to the extent the proposed new requirements improve compliance, an economic benefit in terms of reduced risks to health and safety may be expected from improved water quality. However, the ability of the proposed requirements to improve compliance may be somewhat limited as the owners can abandon the waterworks if the expected administrative or remediation costs associated with required compliance are too high.

Businesses and Entities Affected. Approximately 2,880 waterworks are currently permitted in Virginia. Of those, only eight are estimated to be chronically noncompliant waterworks.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

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

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property expected. However, small administrative costs and potential remediation costs that may result from the proposed requirements would be expected to have a negative effect on the asset value of affected waterworks.

Small Businesses: Costs and Other Effects. Of the 2,880 water works approximately 1,806 are privately owned and all of them are believed to be small businesses. Thus, the potential administrative and remediation costs discussed above, would apply to small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that would minimize the adverse effect for the same level of enforcement improvement.

Real Estate Development Costs. No significant effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed

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

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

Summary:

The proposed amendments provide a regulatory definition of a chronically noncompliant waterworks and establish an enforcement procedure that allows the commissioner to take action against recalcitrant waterworks owners to compel compliance and protect the public health and welfare.

Part I
General Framework for Waterworks Regulations

Article 1
Definitions

12VAC5-590-10. Definitions.

As used in this chapter, the following words and terms shall have meanings respectively set forth unless the context clearly requires a different meaning:

"Action level" means the concentration of lead or copper in water specified in 12VAC5-590-410 E, which determines, in some cases, the treatment requirements contained in 12VAC5-590-420 C, D, E and F that an owner is required to complete.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying pure water to a tank, plumbing fixture, or other device and the rim of the receptacle.

"Annual daily water demand" means the average rate of daily water usage over at least the most recent three-year period.

"Applied water" means water that is ready for filtration.

"Approved" means material, equipment, workmanship, process or method that has been accepted by the commissioner as suitable for the proposed use.

"Auxiliary water system" means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes, or streams; or process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

"Backflow prevention device" means any approved device, method, or type of construction intended to prevent backflow into a waterworks.

"Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best available technology (BAT)" means the best technology, treatment techniques, or other means ~~which~~ that the commissioner finds, after examination for efficacy under field conditions and not solely under laboratory conditions and in conformance with applicable EPA regulations, are available (taking cost into consideration).

"Board" means the State Board of Health.

"Breakpoint chlorination" means the addition of chlorine to water until the chlorine demand has been satisfied and further additions result in a residual that is directly proportional to the amount added.

"Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting

filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Chlorine" means dry chlorine.

"Chlorine gas" means dry chlorine in the gaseous state.

"Chlorine solution (chlorine water)" means a solution of chlorine in water.

"Chronically noncompliant waterworks" or "CNC" means a waterworks that is unable to provide pure water for any of the following reasons: (i) the waterworks' record of performance demonstrates that it can no longer be depended upon to furnish pure water to the persons served; (ii) the owner has inadequate technical, financial, or managerial capacity to furnish pure water to the people served; (iii) the owner has failed to comply with an order issued by the board or the commissioner; (iv) the owner has abandoned the waterworks and has discontinued supplying pure water to the persons served; or (v) the owner is subject to a forfeiture order pursuant to § 32.1-174.1 of the Code of Virginia.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

"Coliform bacteria group" means a group of bacteria predominantly inhabiting the intestines of man or animal but also occasionally found elsewhere. It includes all aerobic and facultative anaerobic, gram-negative, non-sporeforming bacilli that ferment lactose with production of gas. Also included are all bacteria that produce a dark, purplish-green colony with metallic sheen by the membrane filter technique used for coliform identification.

"Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale waterworks and of the consecutive waterworks that receive finished water.

"Commissioner" means the State Health Commissioner.

"Community waterworks" means a waterworks ~~which~~ that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks shall monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001.

"Comprehensive performance evaluation" or "(CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operational and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 12VAC5-590-530 C 1 b (2), the comprehensive performance evaluation shall consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks ~~which~~ that has no water production or source facility of its own and ~~which~~ that obtains all of its water from another permitted waterworks or receives some or all of its finished water from one or more wholesale waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

"Consumer" means any person who drinks water from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Cross connection" means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

"CT" or "CT_{calc}" means the product of "residual disinfectant concentration" (C) in mg/L determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T".

"Daily fluid intake" means the daily intake of water for drinking and culinary use and is defined as two liters.

"Dechlorination" means the partial or complete reduction of residual chlorine in water by any chemical or physical process at a waterworks with a treatment facility.

"Degree of hazard" means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfectant" means any oxidant (including chlorine) that is added to water in any part of the treatment or distribution process for the purpose of killing or deactivating pathogenic organisms.

"Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration ("C") is measured.

"Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of Giardia lamblia or virus inactivation through the treatment plant.

"Distribution main" means a water main whose primary purpose is to provide treated water to service connections.

"District Engineer" means the employee assigned by the Commonwealth of Virginia, Department of Health, Office of Drinking Water to manage its regulatory activities in a geographical area of the state consisting of a state planning district or subunit of a state planning district.

"Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a waterworks with more than one service connection that is limited to the specific service connection from which the coliform positive sample was taken.

"Domestic use or usage" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Double gate-double check valve assembly" means an approved assembly composed of two single independently acting check valves including tightly closing shutoff valves located at each end of the assembly and petcocks and test gauges for testing the watertightness of each check valve.

"Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation (IDSE) under 12VAC5-590-370 B 3 e (2) and determining compliance with the TTHM and HAA5 MCLs under 12VAC5-590-370 B 3 e (3).

"Effective corrosion inhibitor residual~~,~~" means, for the purpose of 12VAC5-590-420 C 1 only, a concentration sufficient to form a passivating film on the interior walls of a pipe.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system.

"Equivalent residential connection" means a volume of water used equal to a residential connection ~~which~~ that is 400 gallons per day unless supportive data indicates otherwise.

"Exception" means an approved deviation from a "shall" criteria contained in Part III (12VAC5-590-640 et seq.) of this chapter.

"Exemption" means a conditional waiver of a specific PMCL or treatment technique requirement ~~which~~ that is granted to a specific waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Finished water" means water that is introduced into the distribution system of a waterworks and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

"First draw sample" means a one-liter sample of tap water, collected in accordance with 12VAC5-590-370 B 6 a (2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" means a course of running water flowing in a definite channel.

"Free available chlorine" means that portion of the total residual chlorine remaining in water at the end of a specified contact period ~~which~~ that will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with 12VAC5-590-410 C 2 b (1) (b) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under the Code of Virginia, including departments, divisions, boards or commissions.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water (or surface water sources).

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium. It also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions. The commissioner in accordance with 12VAC5-590-430 will determine direct influence of surface water.

"Haloacetic acids (five)" or "(HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"Health regulations" means regulations ~~which~~ that include all primary maximum contaminant levels, treatment technique requirements, and all operational regulations, the violation of which would jeopardize the public health.

"Hypochlorite" means a solution of water and some form of chlorine, usually sodium hypochlorite.

"Initial compliance period" means for all regulated contaminants, the initial compliance period is the first full three-year compliance period beginning at least 18 months after promulgation with the exception of waterworks with 150 or more service connections for contaminants listed at Table 2.3, VOC 19-21; Table 2.3, SOC 19-33; and antimony, beryllium, cyanide (as free cyanide), nickel, and thallium ~~which~~ that shall begin January 1993.

"Interchangeable connection" means an arrangement or device that will allow alternate but not simultaneous use of two sources of water.

"Karstian geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. Such areas often feature sinkholes, caverns, and sinking or disappearing creeks. In Virginia, this generally includes all that area west of the Blue Ridge and, in Southwest Virginia, east of the Cumberland Plateau.

"Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Large waterworks" means, for the purposes of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530 D, and 12VAC5-590-550 D only, a waterworks that serves more than 50,000 persons.

"Lead free" means the following:

1. When used with respect to solders and flux, refers to solders and flux containing not more than 0.2% lead;

2. When used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing not more than 8.0% lead;

3. When used with respect to plumbing fittings and fixtures intended by the plumbing manufacturer to dispense water for human ingestion, refers to fittings and fixtures that are in compliance with standards established in accordance with 42 USC § 300g-6(e).

"Lead service line" means a service line made of lead ~~which~~ that connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting that is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Liquid chlorine" means a liquefied, compressed chlorine gas as shipped in commerce.

"Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Log inactivation (log removal)" means that a 99% reduction is a 2-log inactivation; a 99.9% reduction is a 3-log inactivation; a 99.99% reduction is a 4-log inactivation.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in the most current edition of "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum daily water demand" means the rate of water usage during the day of maximum water use.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water ~~which~~ that is delivered to any user of a waterworks, except in the cases of turbidity and VOCs, where the maximum permissible level is measured at each entry point to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. MCLs are set as close to the MCLGs as feasible using the best available treatment technology. Maximum contaminant levels may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL) meaning based on aesthetic considerations.

"Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a waterworks is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a waterworks is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in Table 2.12, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal (MRDLG)" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and ~~which~~ that allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25°C or above.

"Medium-size waterworks," means, for the purpose of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530, and 12VAC5-590-550 D only, a waterworks that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" means a pressure or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and that has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Most probable number (MPN)" means that number of organisms per unit volume that, in accordance with statistical theory, would be more likely than any other number to yield the observed test result or that would yield the observed test result with the greatest frequency, expressed as density of organisms per 100 milliliters. Results are computed from the number of positive findings of coliform-group organisms resulting from multiple-portion decimal-dilution plantings.

"Noncommunity waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity waterworks (NTNC)" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Office" means the Commonwealth of Virginia, Department of Health, Office of Drinking Water.

"One hundred year flood level" means the flood elevation ~~which~~ that will, over a long period of time, be equaled or exceeded on the average once every 100 years.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government ~~which~~ that supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device (POE)" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use treatment device (POU)" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

"Pollution hazard" means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

"Post-chlorination" means the application of chlorine to water subsequent to treatment.

"Practical quantitation level (PQL)" means the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions.

"Prechlorination" means the application of chlorine to water prior to filtration.

"Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Process fluids" means any fluid or solution ~~which~~ that may be chemically, biologically, or otherwise contaminated or polluted ~~which~~ that would constitute a health, pollutional, or system hazard if introduced into the waterworks. This includes, but is not limited to:

1. Polluted or contaminated water;

2. Process waters;

3. Used waters, originating from the waterworks ~~which~~ that may have deteriorated in sanitary quality;

4. Cooling waters;

5. Contaminated natural waters taken from wells, lakes, streams, or irrigation systems;

6. Chemicals in solution or suspension; and

7. Oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes, or for fire fighting purposes.

"Pure water" or "potable water" means water fit for human consumption and domestic use ~~which~~ that is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Raw water main" means a water main ~~which~~ that conveys untreated water from a source to a treatment facility.

"Reduced pressure principle backflow prevention device (RPZ device)" means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In

case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit shall include tightly closing shut-off valves located at each end of the device, and each device shall be fitted with properly located test cocks. These devices shall be of the approved type.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (MREM) is 1/1000 of a REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration ("C" in CT Calculations)" means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Responsible charge" means designation by the owner of any individual to have duty and authority to operate or modify the operation of waterworks processes.

"Sanitary facilities" means piping and fixtures, such as sinks, lavatories, showers, and toilets, supplied with potable water and drained by wastewater piping.

"Sanitary survey" means an investigation of any condition that may affect public health.

"Secondary water source" means any approved water source, other than a waterworks' primary source, connected to or available to that waterworks for emergency or other nonregular use.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;

2. If a meter is not installed, the service connection is the point of connection to the waterworks;

3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

"Service line sample" means a one-liter sample of water, collected in accordance with 12VAC5-590-370 B 6 a (2) (c), that has been standing for at least six hours in a service line.

"Sewer" means any pipe or conduit used to convey sewage or industrial waste streams.

"Single family structure," means, for the purpose of 12VAC5-590-370 B 6 (a) only, a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

"Small waterworks," means, for the purpose of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530 D and 12VAC5-590-550 D only, a waterworks that serves 3,300 persons or fewer.

"Standard sample" means that portion of finished drinking water that is examined for the presence of coliform bacteria.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m-1) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Synthetic organic chemicals (SOC)" means one of the family of organic man-made compounds generally utilized for agriculture or industrial purposes.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"Terminal reservoir" means an impoundment providing end storage of water prior to treatment.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total effective storage volume" means the volume available to store water in distribution reservoirs measured as the difference between the reservoir's overflow elevation and the minimum storage elevation. The minimum storage elevation is that elevation of water in the reservoir that can provide a minimum pressure of 20 psi at a flow as determined in 12VAC5-590-690 C to the highest elevation served within that reservoir's service area under systemwide maximum daily water demand.

"Total organic carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes (TTHM)" means the sum of the concentrations of the trihalomethanes expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of these regulations, the TTHM's shall mean trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transmission main" means a water main whose primary purpose is to move significant quantities of treated water among service areas.

"Treatment technique requirement" means a requirement ~~which~~ that specifies for a contaminant a specific treatment technique(s) demonstrated to the satisfaction of the division to lead to a reduction in the level of such contaminant sufficient to comply with these regulations.

"Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Two-stage lime softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens (except residual disinfection) and is directly open to the atmosphere.

"Unregulated contaminant (UC)" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"Used water" means any water supplied by a water purveyor from the waterworks to a consumer's water system after it has passed through the service connection.

"Variance" means a conditional waiver of a specific regulation ~~which~~ that is granted to a specific waterworks. A PMCL Variance is a variance to a Primary Maximum Contaminant Level, or a treatment technique requirement. An Operational Variance is a variance to an operational regulation or a Secondary Maximum Contaminant Level. Variances for monitoring, reporting and public notification requirements will not be granted.

"Virus" means a microbe that is infectious to humans by waterborne transmission.

"Volatile synthetic organic chemical (VOC)" means one of the family of manmade organic compounds generally characterized by low molecular weight and rapid vaporization at relatively low temperatures or pressures.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks ~~which~~ that is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water purveyor" (same as owner).

"Water supply" means water that shall have been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply" shall not include any waters above the point of intake of such waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Water supply main" or "main" means any water supply pipeline that is part of a waterworks distribution system.

"Water Well Completion Report" means a report form published by the State Water Control Board entitled "Water Well Completion Report," which requests specific information pertaining to the ownership, driller, location, geological formations penetrated, water quantity and quality encountered as well as construction of water wells. The form is to be completed by the well driller.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Waterworks with a single service connection" means a waterworks ~~which~~ that supplies drinking water to consumers via a single service line.

"Wholesale waterworks" means a waterworks that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

12VAC5-590-125. Chronically noncompliant waterworks.

A. The commissioner may identify a waterworks as chronically noncompliant (CNC) whenever he determines that:

1. The waterworks has a documented performance record that demonstrates the waterworks is not a dependable supplier of potable water;

2. The owner has shown inadequate technical, financial, or managerial capabilities to provide potable water;

3. The owner has failed to comply with an order issued by the commissioner;

4. The owner has abandoned the waterworks and has discontinued providing potable water to the consumers; or

5. The owner is subject to a forfeiture order pursuant to § 32.1-174.1 of the Code of Virginia.

B. Once the commissioner determines that a waterworks is CNC, he shall issue an order to the owner containing a schedule to bring the waterworks into compliance with this chapter and require the submission of a comprehensive business plan pursuant to § 32.1-172 B of the Code of Virginia. If capital improvements are necessary to bring the waterworks into compliance, and the owner does not possess sufficient assets to make the necessary improvements, the order shall require the owner to make annual, good faith applications for loans, grants, or both, to appropriate financial institutions to secure funding for such improvements, until such improvements are complete and operational. The owner shall provide a copy of the order to each consumer with a copy of the compliance schedule within 10 calendar days of issuance of the order.

C. The owner shall provide the commissioner a copy of the notice distributed and a signed certification of the distribution completion date within five calendar days of completing the notification required in subsection B of this section.

D. The commissioner shall send a copy of the order to the chief administrative officer of the locality in which the waterworks is located for appropriate action under § 15.2-2146 of the Code of Virginia.

E. In addition to the provisions of § 32.1-27 of the Code of Virginia, any owner who violates this chapter, an order of the board, or a statute governing public water supplies shall be subject to those civil penalties provided in §§ 32.1-167 through 32.1-176 of the Code of Virginia.

VA.R. Doc. No. R09-1136; Filed January 11, 2010, 2:54 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: March 3, 2010.

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 amendment implements Item 306 OO of Chapter 879 of the 2008 Acts of Assembly by requiring providers to obtain prior authorization in order to be reimbursed for intensive in-home services to children and adolescents. This requirement has been in effect since July 2, 2008, under emergency regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is

at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. After an initial period, prior authorization is required for Medicaid reimbursement.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia

Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

VA.R. Doc. No. R08-1328; Filed January 5, 2010, 3:55 p.m.

Final Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-35).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: March 3, 2010.

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 implements reimbursement changes for ambulatory surgery centers as well as outpatient rehabilitation facilities that are currently reimbursed on a cost basis. Since publication of the proposed regulations, 12VAC30-80-200 is changed to delete a reference to a partial year cost report for outpatient rehabilitation services as cost reports are replaced by a statewide fee schedule. Another change includes an amendment to 12VAC30-80-20 to conform that section to the new regulations by deleting comprehensive outpatient rehabilitation facilities from the list of services that are cost reimbursed.

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

[12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.

2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and

reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

3. Rehabilitation agencies operated by community services boards. For reimbursement methodology applicable to other rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

~~4. Comprehensive outpatient rehabilitation facilities.~~

~~5.~~ 4. Rehabilitation hospital outpatient services.]

12VAC30-80-35. Fee for service: ambulatory surgery centers.

A. Definitions: The following words and terms when used in this part shall have the following [~~meaning~~ meanings] unless the context clearly indicates otherwise:

"Ambulatory Patient Group (APG)" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Disease (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"APG relative weight" means the relative expected average costs for each APG divided by the relative expected average costs for visits assigned to all APGs.

B. Effective July 1, 2010, the prospective Ambulatory Patient Group (APG)-based payment system described as follows shall apply to Ambulatory Surgery Center (ASC) services:

1. The operating payments for ASC visits shall be determined on the basis of a base rate per visit times the relative weight of the APG to which the visit is assigned.

2. The APG relative weights shall be the weights determined and published periodically by DMAS. The weights shall be updated at least every three years.

3. The base rate shall be adjusted by the budget neutrality factor (BNF) to ensure that no increase in expenditures occurs as a result of updates to the relative weights. The base period used to adjust the base rate shall be a recent 12-month period prior to the fiscal year that the new base rates will be effective.

4. The operating payment shall represent total allowable amount for a visit including ancillary services.

C. The Ambulatory Patient Group (APG) grouper used in the ASC payment system for ASCs shall be determined by DMAS. Providers or provider representatives shall be given notice prior to implementing a new grouper.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies.

A. Effective for dates of service on and after July 1, ~~2003~~ 2009, rehabilitation agencies, excluding those operated by community services boards and state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's ~~cost per visit for each type of rehabilitation service (physical therapy, occupational therapy, and speech therapy) or a statewide ceiling established for each type of service. The prospective ceiling for each type of service shall be equal to 112% of the median cost per visit, for such services, of rehabilitation agencies. The median shall be calculated using a base year to be determined by the department~~ fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800. ~~Effective July 1, 2003, the median calculated and the resulting ceiling shall be applicable to all services beginning on and after July 1, 2003, and all services in provider fiscal years beginning in SFY2004.~~

~~B. In each provider fiscal year, each provider's prospective rate shall be determined based on the cost report from the previous year and the ceiling, calculated by DMAS, that is applicable to the state fiscal year in which the provider fiscal year begins.~~

~~C.~~ B. For providers with fiscal years that do not begin on July 1, ~~2003,~~ 2009, services on or before June 30, 2009, for the fiscal year in progress on that date shall be ~~apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Costs apportioned before that date shall be~~ settled based on ~~allowable costs, and those after shall be settled based on the prospective methodology~~ the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009. [~~Providers may choose not to submit a cost report for a partial year. In that case, interim payments for services furnished for dates of service prior to July 2009 shall be considered final.~~]

C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.

D. Beginning with state fiscal years beginning on ~~and~~ or after July 1, ~~2004~~ 2010, ~~the ceiling and the provider specific cost per visit~~ rates shall be adjusted annually for inflation~~, from the previous year to the prospective year, using the nursing facility inflation factor published for Virginia by DRI, applicable to the calendar year in progress at the start of the state fiscal year~~ using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

VA.R. Doc. No. R09-1405; Filed January 5, 2010, 3:54 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-10 through 12VAC35-105-70, 12VAC35-105-90, 12VAC35-105-100, 12VAC35-105-110, 12VAC35-105-115, 12VAC35-105-130 through 12VAC35-105-240, 12VAC35-105-260 through 12VAC35-105-560, 12VAC35-105-580 through 12VAC35-105-620, 12VAC35-105-650, 12VAC35-**

105-660, 12VAC35-105-680, 12VAC35-105-690, 12VAC35-105-700, 12VAC35-105-710, 12VAC35-105-720, 12VAC35-105-740, 12VAC35-105-750, 12VAC35-105-770, 12VAC35-105-790 through 12VAC35-105-840, 12VAC35-105-870 through 12VAC35-105-910, 12VAC35-105-925, 12VAC35-105-930 through 12VAC35-105-1020, 12VAC35-105-1040, 12VAC35-105-1050, 12VAC35-105-1060, 12VAC35-105-1080, 12VAC35-105-1090, 12VAC35-105-1100, 12VAC35-105-1110, 12VAC35-105-1140 through 12VAC35-105-1250, 12VAC35-105-1270 through 12VAC35-105-1370, 12VAC35-105-1390, 12VAC35-105-1400, 12VAC35-105-1410; adding 12VAC35-105-155, 12VAC35-105-265, 12VAC35-105-325, 12VAC35-105-645, 12VAC35-105-665, 12VAC35-105-675, 12VAC35-105-691, 12VAC35-105-693, 12VAC35-105-1055, 12VAC35-105-1235, 12VAC35-105-1255; repealing 12VAC35-105-630, 12VAC35-105-640, 12VAC35-105-670, 12VAC35-105-730, 12VAC35-105-850, 12VAC35-105-860).

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

Public Hearing Information:

March 9, 2010 - 10 a.m. - Henrico Area Mental Health and Retardation Services Building, 10299 Woodman Road, Conference Room C, Glen Allen, VA

Public Comment Deadline: April 2, 2010.

Agency Contact: Les Saltzberg, Director, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or email les.saltzberg@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services (board) to adopt regulations necessary to carry out the provisions of Title 37.2 of the Code of Virginia. The board has the authority to adopt regulations for licensing under § 37.2-404 of the Code of Virginia. Providers of services are required to be licensed under § 37-2.405 of the Code of Virginia.

Purpose: This action is necessary to increase the protections for the health, safety, and welfare of individuals receiving services from licensed providers. These revisions strengthen the ability of the Department of Behavioral Health and Developmental Services (DBHDS) to deny applications for licensing, revoke licenses, and restrict the activities of provider applicants that do not meet service standards during the provisional period. The agency has determined that these updates are necessary to resolve issues pertaining to the regulation of service areas where problems have occurred.

These revisions also update the definitions for consistency with other regulations of the board and with the current mission of DBHDS, including the provision of person centered planning and the goals of recovery and self-determination for individuals receiving services. Updates will also ensure that the regulations reflect current standards of practice, statutes, and regulatory requirements.

Substance: The following changes have been proposed:

1. Revise language to reflect the concepts of person centered planning, recovery, and the empowerment of persons receiving services.

2. Update definitions for consistency with other regulations of the board and other state agencies.

3. Update requirements for consistency with mental health reform laws and to allow DBHDS to impose restrictions and requirements on applicants and providers during the provisional licensing period, including requiring disclosure of previous licenses and disciplinary actions, prohibiting provisional providers from adding new services, and adding criteria for denying or revoking a license.

4. Add provisions allowing DBHDS to stipulate on the license the special expertise of a provider, as established by DBHDS.

5. Eliminate the provision requiring an audit every three years and replace it with a provision that DBHDS may require an audit should the circumstances warrant it.

6. Remove the requirement that group homes must be inspected by the Virginia Department of Health. The DBHDS Office of Licensing will continue its routine inspections of kitchens in group homes as part of the licensing process.

7. Add a requirement for providers to designate a staff person to act as a community liaison to work with neighbors, local government, and the community.

8. Adjust the timeframe for submitting a certificate of occupancy and floor plan to be more economical for provider applicants.

9. Limit the occupancy of shared bedrooms in a Medicaid waiver group home to two individuals.

10. Reduce the maximum number of beds allowed in a community intermediate care/mental retardation facility (ICF/MR) from 20 to 12 beds.

11. Add a requirement for stocking a three-day supply of food as recommended by the Virginia Department of Emergency Management.

12. Delete or modify the specific references to and the definitions of Qualified Mental Health Professional (QMHP), Qualified Mental Retardation Professional (QMRP), Qualified Developmental Disabilities Professional, and Qualified Brain Injury Professional. The Department of Medical Assistance Services (DMAS) uses terms QMHP and QMRP for purposes that are not entirely consistent with these regulations. QMHP and QMRP have been replaced with descriptions of the required qualifications for individuals who

supervise and are responsible for approval of assessments and individualized service plans (ISPs). These qualifications have been updated to allow appropriate experience to substitute for a degree.

13. Update the quality improvement process to require providers to obtain input from individuals receiving services about their satisfaction with their participation in individualized service plan (ISP) development.

14. Add a requirement that a history of trauma and abuse be included as part of the comprehensive assessment.

15. Allow for a state or federally sanctioned standardized assessment to substitute for the required assessment in the regulations as long as the standardized assessment incorporates certain health and safety issues.

16. Relocate to the beginning of the ISP section the requirement for the participation of the individual receiving services in the ISP development to stress the importance of this participation.

17.Clarify and strengthen the requirements for initial ISPs. The ISP is now required to be completed within 24 hours of admission and must address health, safety, and immediate service needs.

18. Increase the timeframe for completion of a comprehensive ISP from 30 to 60 days after admission under most conditions. The intention is to reduce paperwork for providers when individuals receive services for periods of less than 60 days.

19. Require that goals on ISPs be written in the language of the individual receiving services whenever possible.

20. Change terminology from "behavior management" to "behavior interventions."

21. Strengthen the requirements for sponsor residential homes. The regulations now outline the requirements for sponsor agreements.

22. Add requirements for licensing sponsor residential services for children according to a recent opinion from the Office of the Attorney General which indicated that DBHDS may license this service.

23. Enhance the requirements for case management services.

Issues: This action poses no disadvantages to the public or the Commonwealth. Several advantages have been identified. The regulations will be more consistent with the needs of individuals receiving services, providers, and the agency's mission. Clarification of regulatory requirements will facilitate their application and promote better understanding for users. Modifications were made to reduce implementation costs for providers and the agency whenever possible and resolve identified problem areas.

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

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to make several substantive amendments to its regulations governing licensure of non-residential care providers and residential facilities. Specifically, the Board proposes to:

• Update definitions (and other text throughout these regulations) to reflect current practices,

• Require applicants for licensure to disclose "the legal names and dates of any services licensed to the applicant in other states or in Virginia" as well as disciplinary actions or sanctions taken against the applicant (in relation to any previously licensed services) and any crimes of which the applicant has been convicted,

• Eliminate the requirement that food services at licensed group homes and community residential homes must be inspected and approved by local health department authorities,

• Eliminate the requirement that providers undergo an audit every three years and replace it with a statement that the Department of Behavioral Health and Developmental Services (DBHDS) may, at its discretion, ask for an audit,

• Eliminate the requirement that service locations that are not hooked into public water and sewer lines have their wells and septic fields inspected annually and replace it with a requirements that these service locations be in compliance with state and local laws for such inspections,

• Limit per bedroom occupancy in Medicaid waiver group homes licensed after the effective date of these proposed regulations to two individuals, and

• Limit maximum patient capacity of Intermediate Care Facility for the Mentally Retarded (ICF/MR) facilities licensed after the effective date of these proposed regulations to 12 individuals.

Result of Analysis. The benefits likely exceed the costs for several proposed changes. There is insufficient information to accurately gauge whether benefits will outweigh costs for several other of these proposed changes. The potential costs associated with further limiting maximum capacity of ICF/MR facilities, however, likely outweigh the potential benefits of making this change. All likely substantive costs and benefits are discussed below.

Estimated Economic Impact. Since these regulations were promulgated, common terminology amongst professionals who care for individuals who are mentally ill, mentally retarded or who have substance abuse issues has changed. The Board proposes to amend not only the definitions section in these regulations, but also language throughout all other

sections, to reflect these changes; for instance, the Board proposes to insert the phrase intellectual disabilities next to each iteration of the phrase mental retardation because intellectual disabilities is more used by individuals who work with the disabled. These changes to language are not likely to increase costs for regulated entities but will likely provide the benefit of additional clarity (since regulatory language will more closely resemble language in common use in this field).

Current state law does not allow the Board to deny licensure to individuals on account of criminal record or sanctions or disciplinary actions levied against them with regard to other licenses that may have been held in the past; current regulations do not require disclosure of conviction or disciplinary action, either. The Board proposes to require that this information be disclosed on any application for licensure. The Board will not be able, at this point, to deny licensure to individuals who have been convicted of crimes or who have been subject to disciplinary action either in Virginia or any other state but they will be able to initiate disciplinary action (which may include loss of licensure) against licensees who fail to disclose this information.

This proposed change will not (absent legislative action) cost applicants with less than pristine past behavior the ability to engage in enterprise for which Board licensure is required but it will provide the benefit of additional information, both for the Board and for citizens who will be able to better choose service providers with this additional information. This proposed change will also allow the Board to discipline individuals who do not fully disclose information about past behavior and, so, may allow the Board to better protect client populations.

Current regulations require service providers that offer food services to have those food services inspected and approved by local health authorities. DBHDS reports that such inspections are not among the tasks that local health authorities normally perform. Since this requires licensees to obtain a service that is not available, the Board proposes to eliminate this provision. This regulatory change will benefit licensees in that it will conform these regulations to reality and clarify what is required of licensee for any entities who might choose to read them.

Current regulations require that licensed service providers have their financial records audited by a certified public accountant every three years. DBHDS reports that these audits usually cost service providers between $1,500 and $2,000. The Board proposes to eliminate the strict time frame for obtaining an audit and instead require that audits be done upon request of the Board. If the Board asks for audits less frequently than every three years, then this proposed change will likely benefit service providers. If, on the other hand, the Board asks for audits more frequently then every three years, this change will likely raise costs for service providers. In practice, the Board will likely ask for audits more frequently from some licensees and less frequently from others (because of complaints, appearance of financial struggle, etc). Whether this proposed change provides a net benefit for service providers as a whole will depend on whether the majority of service providers are audited less often or more often than every three years.

Current regulations require facilities that have septic systems or well water, or both, to inspect those systems on an annual basis. The Board proposes to eliminate this requirement. Instead, regulations will have language that indicates that facilities will have to follow applicable state and local laws. Since facilities are already subject to these laws, this proposed change will only remove any additional inspections imposed by the Board's current regulations. Whether this change provides a benefit for regulated entities will depend on whether state and local laws require inspections less frequently than every year.

Current regulations do not contain a limit on the number of patients per bedroom for Medicaid waiver group homes. The Board proposes to limit group homes (licensed after the effective date of these proposed regulations) to only housing two patients per room. DBHDS reports that this change is being proposed to further therapeutic ends for patients. Patients who reside in these group homes often have sensory issues which cause them to react badly when surrounded by many people or much noise and confusion. This change may benefit patients who have the issues reported by DBHDS but will also decrease the flexibility that group homes currently have to house patients in the most efficient manner possible. This change will also give existing licensed facilities a competitive advantage over future group homes that will be differentially affected by this rule. DBHDS reports that waivers will be available so that more than two patients may be housed in a single room if it would not be adversely impact therapeutic outcomes. Whether this proposed change proves to be a net benefit for patients and licensees will depend on how much patients benefit and how responsive the Board is in issuing waivers.

Current regulations set the maximum capacity for ICF/MR facilities at 20 patients. The Board proposes to lower this capacity for facilities that are licensed after the effective date of these proposed regulations to a maximum of 12 patients. This proposed change would reduce the operational flexibility for facilities licensed in the future and would increase the per patient overhead costs for facilities that would choose to take in more than 12 patients but will be precluded from doing so. DBHDS reports that there are currently four facilities that house more than 12 patients and that facilities must obtain a certificate of public need (COPN) if they plan to house more than 12 patients. DBHDS further reports that there is no evidence that larger facilities are more unsafe or that patients in those facilities have worse outcomes. This change will also give existing licensed facilities a competitive advantage over future group homes that will be differentially affected by this

rule. Costs will likely outweigh benefits for this proposed change.

Businesses and Entities Affected. DBHDS reports that the Board currently licenses 524 facilities, 484 of which qualify as small businesses. All of these licensees and the clients that they serve will be affected by these proposed regulations.

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

Projected Impact on Employment. The proposal to further limit capacity of IFC/MR facilities licensed in the future may artificially lower demand for the labor of individuals who would be hired if these facilities were working under current rules. This might limit growth in employment in these fields.

Effects on the Use and Value of Private Property. The proposal to further limit capacity of IFC/MR facilities licensed in the future will likely increase per patient costs (compared to costs for current facilities. This will put such facilities at a competitive disadvantage and will likely limit profits for such facilities.

Small Businesses: Costs and Other Effects. The proposal to further limit capacity of IFC/MR facilities licensed in the future will likely increase per patient costs (compared to costs for current facilities. This will put such facilities at a competitive disadvantage and will likely limit profits for such facilities. DBHDS reports that 484 of the facilities licensed by the Board qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The extra costs incurred by small businesses licensed in the future would be further minimized if maximum capacity for ICF/MR facilities were not lowered by 40%.

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:

The proposed amendments (i) update definitions and text of the regulations to reflect current practices as well as relevant laws and regulations; (ii) require applicants for licensure to disclose other services licensed to the applicant in other states or Virginia, disciplinary actions or sanctions taken against the applicant in relation to any previously licensed service, and any criminal convictions; (iii) strengthen the ability to take disciplinary action or impose restrictions when providers fail to comply with licensing standards and to deny licenses to applicants under certain conditions; (iv) eliminate the local health department inspection and approval requirement for food services at licensed group homes and community residential homes; (v) eliminate the periodic audit requirement and replace it with a statement that the Department of Behavioral Health and Developmental Services may ask for an audit at its discretion; (vi) eliminate the wells and septic fields annual inspection for service locations not hooked into public water and sewer lines and replace it with a requirement to comply with state and local laws for such inspections; (vii) limit the per bedroom occupancy in Medicaid waiver group homes licensed after the effective date of these proposed regulations to two individuals; and (viii) limit the maximum patient capacity of a community intermediate care/mental retardation facility licensed after the effective date of these proposed regulations to 12 individuals.

CHAPTER 105
RULES AND REGULATIONS FOR ~~THE~~ LICENSING ~~OF~~ PROVIDERS ~~OF MENTAL HEALTH, MENTAL RETARDATION, SUBSTANCE ABUSE, THE INDIVIDUAL AND FAMILY DEVELOPMENTAL DISABILITIES SUPPORT WAIVER, AND RESIDENTIAL BRAIN INJURY~~ BY THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Part I
General Provisions

Article 1
Authority and Applicability

12VAC35-105-10. Authority and applicability.

A. Section ~~37.1-179.1~~ 37.2-404 of the Code of Virginia authorizes the commissioner to license providers subject to rules and regulations ~~promulgated~~ adopted by the State ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Board of Behavioral Health and Developmental Services.

B. No provider shall establish, maintain, conduct or operate any service ~~for persons with mental illness or mental retardation or persons with substance addiction or abuse~~ without first receiving a license from the commissioner.

Article 2.
Definitions

12VAC35-105-20. Definitions.

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

"Abuse" (§ 37.2-100 of the Code of Virginia) means any act or failure to act by an employee or other person responsible for the care of an individual ~~receiving services~~ in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to ~~an individual~~ a person receiving ~~services~~ care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorder). Examples of abuse include~~, but are not limited to, the following~~ acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods, or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the person's ~~individual service~~ individualized services plan;

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his ~~individual service~~ individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and include bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service ~~that includes orientation to service goals, rules and requirements, and assignment to appropriate employees~~ as defined by the provider's policies.

"Authorized representative" means a person permitted by law or the Rules and Regulations to Assure Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115) to authorize the disclosure of information or consent to treatment and services or the participation in human research.

"Behavior ~~management~~ intervention" means those principles and methods employed by a provider to help an individual receiving services ~~to~~ achieve a positive outcome and to address and correct inappropriate challenging behavior in a constructive and safe manner. Behavior ~~management~~ intervention principles and methods must be employed in accordance with the individualized ~~service~~ services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

~~"Behavioral treatment" or "positive behavior support program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.~~

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic

data collection, such as a functional assessment, for the purpose of assisting individuals to achieve:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means ~~a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, cognitive, or social functioning~~ the individually planned, sound, and therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" means ~~assisting~~ assistance to individuals and their ~~families to access~~ family members in assessing needed services ~~and supports~~ that are ~~essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting~~ responsive to the person's individual needs. Case management services include: identifying and reaching out to potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. ~~Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.~~ The term "case management service" does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development.

"Commissioner" means the Commissioner of the Department of ~~Mental~~ Behavioral Health~~, Mental Retardation~~ and ~~Substance Abuse Services or his authorized agent~~ Developmental Services.

"Community gero-psychiatric residential services" means 24-hour ~~nonacute~~ care ~~in conjunction with treatment~~ provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that ~~provides~~ is less intensive ~~services~~ than a psychiatric hospital~~,~~ but more intensive ~~mental health services~~ than a nursing home or group home. ~~Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided~~ Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavioral interventions, nursing, and other health related services. ~~An Interdisciplinary Services Team assesses the individual and develops the services plan.~~

"Community intermediate care facility/mental retardation (ICF/MR)" means a ~~service~~ residential facility ~~licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided~~ in which care is provided to individuals who have mental retardation (intellectual disability) or a developmental disability ~~due to brain injury~~ who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities ~~must~~ shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation ~~brought to the attention of the department that a licensed provider violated~~ of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, mental retardation (intellectual disability), or substance use disorder; brain injury; or developmental disability.

"Co-occurring services" means individually planned, sound, and therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders who have an established diagnosis in one domain such as mental illness, mental retardation (intellectual disability), substance abuse disorder, developmental disability, or brain injury and signs or symptoms of an evolving disorder in another domain; or who present acute signs or symptoms of a co-occurring condition.

~~"Consumer service plan" or "CSP" means that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences.~~

"Corrective action plan" means the provider's pledged corrective action in response to ~~noncompliances~~ cited areas of noncompliance documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to ~~the~~ an individual's body (i) through actions such as, but not limited to, striking or hitting the individual with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort to the individual.

"Crisis" means a situation ~~in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration~~ that produces emotional, mental, physical, medical, or behavioral distress or challenges; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

"Crisis stabilization" means direct, intensive ~~intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period~~ nonresidential ambulatory or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means ~~the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation or related conditions, or brain injury, to improve functioning or maintain an optimal level of functioning~~ structured programs of treatment, activity, or training services generally in clusters of two or more continuous hours per day provided to groups or individuals in nonresidential (center-based) settings or in the community (noncenter-based) settings. ~~Services may~~ Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following ~~skills~~: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. ~~Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day.~~ The term "day support service" does not include services in which the primary function is to provide ~~extended sheltered or competitive employment, supported or transitional~~ employment-related services, general ~~education~~ educational services, or general recreational services~~, or outpatient services licensed pursuant to this chapter~~.

"Day treatment services" means ~~the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day~~ treatment that includes the major diagnostic, medical, psychiatric, psychosocial, and prevocational and educational treatment modalities designed for adults with serious mental illnesses or substance use or co-occurring disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment that is not provided in outpatient services. Partial hospitalization is a type of day treatment service. See definitions of "therapeutic day treatment services for children and adolescents" and "partial hospitalization."

"Department" means the Virginia Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and ~~Substance Abuse~~ Developmental Services.

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider or individual.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates ~~planning for aftercare~~ delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means ~~mental health, mental retardation or substance abuse services available~~ unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, 24 hours a day and seven days per week ~~that provide crisis intervention, stabilization, and referral assistance over the telephone or face to face for individuals seeking services for themselves or others~~. Emergency services also may include walk-ins, home visits, jail interventions, ~~pre-admission screenings,~~ preadmission and ~~other~~ screening activities ~~designed to stabilize an individual within the setting most appropriate to the individual's current condition~~ associated with judicial admission to a state hospital, inpatient or crisis stabilization unit, training center, or other activities associated with the judicial admission process, such as mandatory outpatient treatment orders.

"Group home or community residential service" means a congregate ~~residential~~ service providing 24-hour supervision in a community-based, home-like dwelling. ~~These services are provided for individuals needing assistance~~ Services include supervision, supports, counseling, and training in activities of daily living ~~or~~ for individuals whose service plan identifies the need for the specific ~~type~~ types of ~~supervision or counseling~~ services available in this setting. Section 15.2-2291 of the Code of Virginia defines group homes for zoning purposes as having eight or fewer residents.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving ~~care or treatment or other~~ services ~~from a provider~~ that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving services of the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan ~~of action to meet the needs and preferences of an individual~~ that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means ~~a~~ intensive 24-hour ~~intensive~~ medical, nursing ~~care~~, and treatment services provided ~~for~~ to individuals with mental ~~illness~~ illnesses or ~~problems with~~ substance ~~abuse~~ use disorders in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

~~The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.~~

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including ~~such~~ individuals who also have a diagnosis of mental retardation (intellectual disability). ~~Services are~~ Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. ~~These services include~~ The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management ~~activities~~ and coordination with other services~~; and emergency response~~.

"Intensive outpatient service" means treatment provided in a concentrated manner ~~(involving multiple outpatient visits per week)~~ over a period of time for individuals requiring intensive outpatient stabilization. ~~These services usually~~ Intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

~~"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.~~

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family counselor, or ~~certification as a~~ certified psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by the court pursuant to § 37.2-817 D of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility, under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication error" means ~~that~~ an error ~~has been made~~ in administering a medication to an individual when any of the following occur: (i) the wrong medication is given to an individual~~,~~ such as (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the proper method is not used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented psychosocial rehabilitation services to individuals with long-term, severe psychiatric disabilities ~~including~~. MHCSS include skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in ~~their~~ the individualized ~~service~~ services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS ~~Services are~~ may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation (intellectual disability)" means ~~substantial~~ a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage ~~general~~ intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) ~~that originates during the development period and is associated with impairment~~ significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia). ~~It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.~~ According to the American Association on Intellectual and Developmental Disabilities (AAIDD) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor and behavioral factors. Within an individual, limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations, the term "intellectual disability" is used instead of "mental retardation."

~~"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.~~

"Neglect" means the failure by an individual or ~~provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse (§ 37.2-100 of the Code of Virginia). This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS or Brain Injury Waiver and individuals receiving residential brain injury services~~ a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means ~~a variety of~~ treatment ~~interventions generally~~ provided to individuals~~, groups or families~~ on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include~~, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services~~ diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, medication services, and, jail and detention-based services. "Outpatient service" specifically includes:

1. Services operated by a community services board established pursuant to Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;

2. Services funded wholly or in part, directly or indirectly, by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Plan of care" means a document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver) in all life areas. It

includes supporting documentation developed by service providers. Factors considered in developing this plan may include recipient ages, level of functioning, and preferences.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses~~;~~, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

~~The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.~~

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to persons with mental illness, mental retardation (intellectual disability), or substance abuse~~;~~, (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver~~;~~, (iii) services to persons under the Brain Injury Waiver~~;~~, or (iv) residential services for persons with brain injury. The person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation ~~service~~" means ~~care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting them to assume responsibility over their lives and to function as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living~~ the process of providing assessment, medication education, opportunities to learn and use independent living skills and enhance social and interpersonal skills, opportunities for vocational and other education, family support and education, and advocacy in a supportive community environment focusing on normalization. It emphasizes strengthening the individual's ability to deal with everyday life rather than focusing on the treatment of pathological conditions. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

~~"Qualified Brain Injury Professional (QBIP)" means a clinician in the health professions who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: a person with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: a person with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college, with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) certified brain injury specialist; (vi) registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.~~

~~"Qualified Developmental Disabilities Professional (QDDP)" means an individual possessing at least one year of documented experience working directly with individuals who have related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.~~

"Qualified Mental Health Professional (QMHP)" means ~~a clinician in the health professions~~ a person working in a PACT or ICT who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric

rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the ~~International Association of Psychosocial Rehabilitation Services (IAPSRS)~~ United States Psychiatric Rehabilitation Association (USPRA); (vi) registered nurse licensed in ~~the Commonwealth of~~ Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

~~"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.~~

~~"Qualified Paraprofessional in Brain Injury (QPPBI)" means an individual with at least a high school diploma and two years experience working with individuals with disabilities.~~

"Qualified Paraprofessional in Mental Health (QPPMH)" means ~~an individual~~ a person who must, at a minimum, meet one of the following criteria: (i) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) an Associate's Degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance use disorders, recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with mental retardation (intellectual disability), the concept of recovery does not apply in the sense that persons with mental retardation (intellectual disability) will need supports throughout their entire life although these may change over time. With supports, individuals with mental retardation (intellectual disability) are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others that they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Related conditions" or "developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation (intellectual disability), and requires treatment or services similar to those required for these persons;

2. Manifested before the person reaches age 22;

3. Likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means ~~a category of service~~ providing 24-hour ~~care~~ support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include~~, but are not limited to:~~ residential treatment, group or community homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification,

neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Individuals providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or in a sponsored residential home.

"Restraint" means the use of ~~an approved~~ a mechanical device, medication, physical intervention, or hands-on hold~~, or pharmacologic agent~~ to ~~involuntarily~~ prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. ~~This term includes restraints used for behavioral, medical, or protective purposes.~~ There are three kinds of restraints:

~~1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.~~

~~2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual's condition.~~

~~3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).~~

~~4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.~~

~~5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual's medical or psychiatric condition.~~

~~6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands on approach or (ii) to quickly de escalate a dangerous situation that could cause harm to the individual or others.~~

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the ~~preliminary assessment of an individual's appropriateness for admission or readmission to a service~~ process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual ~~receiving services~~ alone~~,~~ in ~~a locked room or secured area from which he is physically prevented from leaving~~ an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner while the individual is supervised by or involved in services; or injuries related to the individual's diagnosis wherever they occur, such as, attempted suicides, medication overdoses, reactions from medications administered or prescribed by the service, when the injuries require medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" or "services" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services; (ii) day support, in home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from excessive use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise and provide programmatic, financial, and service support to families or ~~individuals~~ persons (sponsors) providing care or treatment in their own homes for adults.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the ~~Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services~~ department that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug. ~~This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.~~

"Substance abuse" or "substance use disorder" means the use~~,~~ of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason~~, of~~ or alcohol ~~and other drugs which~~ that (i) results in psychological or physiological ~~dependency~~ dependence or danger to self or others as a function of continued and compulsive use ~~in such a manner as to induce~~ or (ii) results in mental, emotional or physical impairment ~~and cause~~ that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation,

housekeeping, medication administration, personal hygiene, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals. ~~Services~~, to strengthen individual skills, and to provide environmental supports necessary to attain and sustain independent community residential living. ~~They~~ Services include~~, but are not limited to,~~ drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic corrective action" means the provider's plans to address any cited violation of these regulations that will significantly reduce the probability that the violation will re-occur.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means ~~assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided~~ the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

Part II
Licensing Process

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to ~~one or a combination of the following disability groups: persons with~~ individuals who have mental illness, ~~persons with~~ mental retardation (intellectual disability), ~~persons with~~ or substance ~~addiction or abuse problems; persons with related conditions~~ use disorder; have developmental disability and are served under the IFDDS Waiver~~,~~; or ~~persons with~~ have brain injury and are served in residential settings or under the Brain Injury Waiver ~~or in a residential service~~.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;

~~2. Clubhouse;~~

~~3.~~ 2. Community gero-psychiatric residential;

~~4.~~ 3. Community intermediate care facility-MR;

~~5. Crisis~~ 4. Residential crisis stabilization ~~(residential and nonresidential)~~;

5. Nonresidential crisis stabilization;

6. Day support;

7. Day treatment, includes club house and therapeutic day treatment for children and adolescents;

8. Group home and community residential;

9. Inpatient psychiatric;

10. Intensive Community Treatment (ICT);

11. Intensive in-home;

12. Intensive outpatient;

13. ~~Medical detoxification~~ Managed withdrawal, including medical detoxification and social detoxification;

14. Mental health community support;

15. Opioid treatment;

16. Emergency;

~~16.~~ 17. Outpatient;

~~17.~~ 18. Partial hospitalization;

~~18.~~ 19. Program of assertive community treatment (PACT);

~~19.~~ 20. Psychosocial rehabilitation;

~~20.~~ 21. Residential treatment;

~~21.~~ 22. Respite care;

~~22. Social detoxification;~~

23. Sponsored residential home;

24. Substance abuse residential treatment for women with children;

25. Supervised living residential; and

26. Supportive in-home.

C. A license addendum ~~describes~~ shall describe the services licensed, the ~~population~~ disabilities of individuals who may be served, the specific locations where services are to be provided or ~~organized~~ administered, and the terms~~,~~ and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of ~~beds~~ individuals each residential location may serve at a given time.

12VAC35-105-40. Application requirements.

A. All providers that are not currently licensed shall be required to apply for a license using the application designated by the commissioner. Providers applying for a license ~~must~~ shall submit:

1. A working budget showing projected revenue and expenses for the first year of operation, including a revenue plan.

2. Documentation of working capital to include:

a. Funds or a line of credit sufficient to cover at least 90 days of operating expenses if the provider is a corporation, unincorporated organization or association, a sole proprietor, or a partnership.

b. Appropriated revenue if the provider is a state or local government agency, board or commission.

3. Documentation of authority to conduct business in the Commonwealth of Virginia.

4. A disclosure statement identifying the legal names and dates of any services licensed to the applicant in other states or in Virginia, previous sanctions or negative actions against any license to provide services that the applicant holds or has held in any other state or in Virginia, the names and dates of any disciplinary actions involving the applicant's current or past licensed services, and any criminal convictions and conviction dates involving the applicant.

B. Providers ~~must~~ shall submit an application listing each service to be provided and submit the following items for each service:

1. A staffing plan;

2. Employee credentials ~~or~~ and job descriptions containing all the elements outlined in 12VAC35-105-410 A;

3. A service description containing all the elements outlined in 12VAC35-105-580 C; and

4. Records management policy containing all the elements outlined in 12VAC35-105-390 and 12VAC35-105-870 A~~; and~~.

~~5. A certificate of occupancy, floor plan (with dimensions), and any required inspections for all service locations.~~

C. The provider shall confirm his intent to renew the license prior to the expiration date of the license and notify the department in advance of any changes in service or location.

12VAC35-105-50. Issuance of licenses.

A. The commissioner ~~issues~~ may issue the following types of licenses.

B. A conditional license shall be issued to a new provider ~~or service~~ for services that demonstrates compliance with administrative and policy regulations but has not demonstrated compliance with all the regulations.

1. A conditional license shall not exceed six months.

2. A conditional license may be renewed if the provider is not able to demonstrate compliance with all the regulations at the end of the license period. A conditional license and any renewals shall not exceed 12 successive months for all conditional licenses and renewals combined.

3. A provider or service holding a conditional license shall demonstrate progress toward compliance.

4. A provider holding a conditional license shall not add services or locations during the conditional period.

5. A group home or community residential service provider shall not serve more than four individuals in a single location during the conditional period.

C. A provisional license may be issued to a provider ~~or~~ for a service that has demonstrated an inability to maintain compliance with regulations, has violations of human rights or licensing regulations that pose a threat to the health or safety of individuals being served, has multiple violations of human rights or licensing regulations, or has failed to comply with a previous corrective action plan.

1. A provisional license may be issued at any time.

2. The term of a provisional license may not exceed six months.

3. A provisional license may be renewed; but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined.

4. A provider or service holding a provisional license shall demonstrate progress toward compliance.

5. A provider for a service holding a provisional license shall not increase its services or locations or expand the capacity of the service.

~~5.~~ 6. A provisional license for a service shall be noted as a stipulation on the provider license. The stipulation shall also indicate the violations to be corrected and the expiration date of the provisional license.

D. A full license shall be issued after a provider or service demonstrates compliance with all the applicable regulations.

1. A full license may be granted to a provider for service for up to three years. The length of the license shall be in the sole discretion of the commissioner.

2. If a full license is granted for three years, it shall be referred to as a triennial license. A triennial license shall be granted to providers for services ~~who~~ that have ~~had no noncompliances or only violations that did not pose a threat to the health of safety of individuals being served during the previous license period~~ demonstrated compliance with the regulations. The commissioner may ~~waive this limitation if the provider has demonstrated consistent compliance for more than a year or that sufficient provider oversight is in place~~ issue a triennial license to a provider for service that had violations during the previous license period if those violations did not pose a threat to the health or safety of individuals being served and the provider or service has demonstrated consistent compliance for more than a year and has a process that provides sufficient oversight to maintain compliance in place.

3. If a full license is granted for one year, it shall be referred to as an annual license.

4. The term of the first full renewal license after the expiration of a conditional or provisional license ~~may~~ shall not exceed one year.

E. ~~The license may bear stipulations.~~ Stipulations ~~may be limitations on the provider or may impose additional requirements. Terms of any such stipulations on licenses issued to the provider shall be specified on the provider license~~.

1. Stipulations may be added to the license issued to the provider to place limits on the provider or to impose additional requirements on the provider. Terms of any such stipulations shall be specified on the provider license.

2. Stipulations may recognize the expertise of the provider as defined and approved by the department to serve individuals with specialized needs.

F. A license shall not be transferred or assigned to another provider. A new application shall be made and a new license issued when there is a change in ownership.

G. A license shall not be issued or renewed unless the provider is affiliated with a local human rights committee.

H. No service ~~may~~ shall be issued a license with an expiration date that is after the expiration date of the provider license.

I. A license ~~continues~~ shall continue in effect after the expiration date if the provider has submitted a renewal application before the date of expiration and there are no grounds to deny the application. The department shall issue a letter stating the provider or service license shall be effective for six additional months if the license is not issued before the date of expiration.

12VAC35-105-60. Modification.

A. ~~Upon written request by the provider, the license may be modified during the term of the license with respect to the populations~~ A provider shall submit a written service modification application at least 45 days in advance of a proposed modification to its license. The modification may address the characteristics of individuals served (disability, age, and gender), the services offered, the locations where services are provided, existing stipulations ~~and the~~, or the maximum number of ~~beds. Approval of such request shall be at the sole discretion of the commissioner~~ individuals served under the provider or service license.

B. ~~A change requiring a modification of the license shall not be implemented prior to approval by the commissioner. The department may give approval to implement a modification pending the issuance of the modified license based on guidelines determined by the commissioner~~ Upon receipt of the completed service modification application, the commissioner may revise the provider or service license. Approval of such request shall be at the sole discretion of the commissioner.

C. A change requiring a modification of the license shall not be implemented prior to approval by the commissioner. The department may send the provider a letter approving implementation of the modification pending the issuance of the modified license.

12VAC35-105-70. Onsite reviews.

A. The department shall conduct an announced or unannounced onsite review of all new providers and services to determine compliance with this chapter.

B. The department shall conduct unannounced onsite reviews of licensed providers and each ~~of its services~~ service at any time and at least annually to determine compliance with these regulations. The annual unannounced onsite reviews shall be focused on preventing specific risks to individuals, including an evaluation of the physical facilities in which the services are provided.

C. The department may conduct announced and unannounced onsite reviews at any time as part of the investigations of complaints or incidents to determine if there is a violation of this chapter.

12VAC35-105-90. Compliance.

A. The department shall determine the level of compliance with each regulation as follows:

1. "Compliance" (C) means the provider ~~is~~ clearly ~~in compliance with~~ acts in accordance with a regulation.

2. "Noncompliance" (NC) means the provider ~~is clearly in noncompliance with~~ fails to meet or violates part or all of a regulation.

3. "Not Determined" (ND) means that the provider must provide additional information to determine compliance with a regulation.

4. "Not Applicable" (NA) means the provider is specifically exempted from or not required to demonstrate compliance with the provisions of a regulation ~~at the time~~.

B. The provider, including its employees, contract service providers, student interns and volunteers, shall comply with all applicable regulations.

12VAC35-105-100. Sanctions.

A. The commissioner may invoke the sanctions enumerated in ~~§ 37.1-185.1~~ § 37.2-419 of the Code of Virginia upon receipt of information that a licensed provider is:

1. In violation of the provisions of ~~§§ 37.1-84.1 and 37.1-179 through 37.1-189.1~~ §§ 37.2-400 through 37.2-422 of the Code of Virginia, these regulations, or the provisions of the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12VAC35-115); and

2. Such violation adversely ~~impacts~~ affects the human rights of individuals, or poses an imminent and substantial threat to the health, safety or welfare of individuals.

The commissioner shall notify the provider in writing of the specific violations found, and of his intention to convene an informal conference pursuant to § 2.2-4019 of the Code of Virginia at which the presiding officer will be asked to recommend issuance of a special order.

B. The sanctions contained in the special order shall remain in effect during the pendency of any appeal of the special order.

12VAC35-105-110. Denial, revocation or suspension of a license.

A. An application for a license or license renewal may be denied and a full, conditional, or provisional license may be revoked or suspended for one or more of the following reasons:

1. The provider has violated any provisions of ~~Chapter 8 (§ 37.1-179 et seq.) of Title 37.1~~ Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia or these licensing regulations;

2. The provider's conduct or practices are detrimental to the welfare of any individual receiving services or in violation of human rights identified in ~~§ 37.1-84.1~~ § 37.2-400 of the Code of Virginia or the human rights regulations (12VAC35-115);

3. The provider permits, aids, or abets the commission of an illegal act;

4. The provider fails or refuses to submit reports or to make records available as requested by the department;

5. The provider refuses to admit a representative of the department to the premises; ~~or~~

6. The provider fails to submit or implement an adequate corrective action plan~~.~~; or

7. The provider submits substantively misleading or false information to the department.

B. A provider shall be notified in writing of the department's intent to deny, revoke or suspend a License; the reasons for the action; the right to appeal; and the appeal process. The provider has the right to appeal the department's decision under the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-105-115. Summary suspension.

A. In conjunction with any proceeding for revocation, denial or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the ~~residents~~ individuals living there, the commissioner may issue an order of summary suspension of the license to operate any group home or residential ~~facility~~ service for adults when he believes the operation of the home or ~~facility~~ residential service should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;

2. The procedures for the hearing;

3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to

require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the group home or residential facility for adults or its designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation, and (ii) notice that the group home or residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that any other legal guardians or responsible family members are informed of the pending action.

12VAC35-105-130. Confidentiality of records.

Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as required or permitted by law.

Part III
Administrative Services

Article 1
Management and Administration

12VAC35-105-140. License availability.

The current license or a copy shall be prominently displayed for public inspection in all service locations.

12VAC35-105-150. Compliance with applicable laws, regulations and policies.

The provider including its employees, contractors, students, and volunteers shall comply with:

1. These regulations;

2. ~~Terms~~ The terms and stipulations of the license;

3. All applicable federal, state or local laws, and regulations including but not limited to:

a. Laws regarding employment practices including the Equal Employment Opportunity Act;

b. The Americans with Disabilities Act and the Virginians with Disabilities Act;

c. Occupational Safety and Health Administration regulations;

d. Virginia Department of Health regulations;

e. Laws ~~or~~ and regulations of the Department of Health Professions;

f. Uniform Statewide Building Code; and

g. Uniform Statewide Fire Prevention Code.

4. Section ~~37.1-84.1~~ 37.2-400 of the Code of Virginia ~~on the human rights of individuals receiving services~~ and related human rights regulations adopted by the state board; and

~~5. Section 37.1-197.1 of the Code of Virginia regarding prescreening and predischarge planning. Providers responsible for complying with § 37.1-197.1 are required to develop and implement policies and procedures that include:~~

~~a. Identification of employees or services responsible for prescreening and predischarge planning services for all disability groups; and~~

~~b. Completion of predischarge plans prior to an individual's discharge in consultation with the state facility which:~~

~~(1) Involve the individual or his legally authorized representative and reflect the individual's preferences to the greatest extent possible consistent with the individual's needs.~~

~~(2) Include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identify the public or private agencies or persons that have agreed to provide them.~~

~~6.~~ 5. The provider's own policies. All required policies shall be in writing.

12VAC35-105-155. Preadmission screening, predischarge planning, involuntary commitment, and mandatory outpatient treatment orders.

A. Providers responsible for complying with § 37.2-505 of the Code of Virginia regarding community service board preadmission screening and predischarge planning shall establish and implement policies and procedures that include:

1. Identification, qualification, training, and responsibilities of employees responsible for prescreening and predischarge planning.

2. Completion of predischarge plans prior to an individual's discharge in consultation with the state facility that:

a. Involve the individual or his authorized representative and reflect the individual's preferences to the greatest extent possible consistent with the individual's needs.

b. Include mental health, mental retardation (intellectual disability), substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identify the public or private agencies or persons that have agreed to provide them.

B. Any provider who serves individuals through an emergency custody order, temporary detention order, or mandatory outpatient treatment order shall develop and implement policies and procedures to comply with §§ 37.2-800 through 37.2-817 of the Code of Virginia.

12VAC35-105-160. Reviews by the department; requests for information.

A. The provider shall permit representatives from the department to conduct reviews to:

1. Verify application information;

2. Assure compliance with this chapter; and

3. Investigate complaints.

B. The provider shall cooperate fully with inspections and provide all information requested to assist representatives from the department who conduct inspections.

C. The provider shall collect, maintain, and report or make available the following information to the department:

1. Each allegation of abuse or neglect shall be reported to the assigned human rights advocate and the individual's authorized representative within 24 hours from the receipt of the initial allegation ~~and the investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the provider and the human rights advocate within 10 working days, unless an exemption has been granted, from the date the investigation began. The report shall include but not be limited to the following: whether abuse, neglect or exploitation occurred; type of abuse; and whether the act resulted in physical or psychological injury~~. Reported information shall include the type of abuse, neglect, or exploitation that is alleged and whether there is physical or psychological injury to the individual.

2. ~~Deaths and~~ Each instance of death or serious ~~injuries~~ injury shall be reported in writing to the department within 24 hours of discovery and by phone to the ~~legally~~ individual's authorized representative as applicable within 24 hours ~~to~~. Reported information shall include, but not be limited to, the following: the date and place of the individual's death or serious injury; the nature of the individual's injuries and the treatment ~~required~~ received; and the circumstances of the death or serious injury. Deaths that occur in a hospital as a result of illness or injury occurring when the individual was in a licensed service shall be reported.

3. Each instance of seclusion or restraint that does not comply with the human rights regulations or approved variances, or that results in injury to an individual, shall be reported to the ~~legally~~ individual's authorized representative and the assigned human rights advocate within 24 hours.

4. Reports and other such information required by the department to establish compliance with these regulations or any other local, state, and federal statutues or regulations.

~~D. The provider shall submit, or make available, reports and information that the department requires to establish compliance with these regulations and applicable statutes.~~

~~E.~~ D. Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17 of the Code of Virginia.

~~F. If~~ E. Additional information requested by the department if compliance with a regulation cannot be determined~~, the department shall issue a licensing report requesting additional information. Additional information must~~ shall be submitted within 10 business days of the issuance of the licensing report requesting additional information. Extensions may be granted

by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days.

F. Applicants and providers shall not submit substantively misleading or false information to the department.

12VAC35-105-170. Corrective action plan.

A. If there is noncompliance with any ~~of these regulations~~ applicable regulation during an initial or ongoing review or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan for each violation cited.

B. The provider shall submit to the department and implement a written corrective action plan for each regulation with which it is found to be in ~~noncompliance with these regulations identified on~~ violation as identified in the licensing report.

C. The corrective action plan shall include a:

1. Description of the systemic corrective actions to be taken that will minimize the possibility that the violation will occur again;

2. Date of completion for each corrective action; and

3. Signature of the person responsible for the service.

D. The provider shall submit a corrective action ~~plans~~ plan to the department within 15 business days of the issuance of the licensing report. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

E. ~~A corrective action plan shall be approved by the department~~ Upon receipt of the corrective action plan, the department shall review the plan and shall determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved by the department.

F. When the provider disagrees with a citation of a violation, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor to challenge a finding of noncompliance. The determination of the supervisor is final.

G. The provider shall monitor implementation of pledged corrective action and include a plan for such monitoring in its quality assurance activities specified in 12VAC30-105-620.

12VAC35-105-180. Notification of changes.

A. The provider shall notify the department in writing prior to implementing changes that affect:

1. Organizational or administrative structure, including the name of the provider;

2. Geographic location of the provider or its services;

3. Service description as defined in these regulations;

4. Significant changes ~~in qualifications required for a position or qualifications of an individual occupying a position~~ to the staffing plan, position descriptions, or employee or contractor qualifications; or

5. Bed capacity for services providing residential or inpatient services.

B. The provider shall not implement the specified changes without the prior approval of the department.

C. The provider shall provide any documentation necessary for the department to determine continued compliance with these regulations after any of these specified changes are implemented.

D. A provider shall notify the department in writing of its intent to discontinue services 30 days prior to the cessation of services. The provider ~~will~~ shall continue to provide all services that are identified in ~~every~~ each individual's ~~Individualized Services Plan (ISP)~~ ISP after it has given official notice of its intent to cease operations and until each individual is appropriately discharged. The provider ~~will~~ shall further continue to maintain substantial compliance with all applicable regulations as it discontinues its services.

E. All individuals receiving services or their authorized representatives shall be notified of the provider's intent to cease services in writing 30 days prior to the cessation of services. This written notification ~~will~~ shall be documented in each individual's ISP~~. Also, refer to~~ as outlined in Records Management, Part V (12VAC35-105-870 et seq.) of this chapter.

12VAC35-105-190. Operating authority, governing body and organizational structure.

A. The provider shall provide the following evidence of its operating authority~~.~~:

1. ~~A public organization~~ Public organizations shall provide documents describing the administrative framework of the governmental department of which it is a component or describing the legal and administrative framework under which it was established and operates.

2. All private organizations except sole proprietorships shall provide a ~~certification~~ certificate from the State Corporation Commission.

B. The ~~provider's~~ provider shall provide an organizational chart that clearly identifies its governing body and organizational structure ~~shall be clearly identified by providing an organizational chart~~.

C. The provider shall document the role and actions of the governing body, which shall be consistent with its operating authority. The provider shall identify its operating elements and services, the internal relationship among these elements and services, and ~~the~~ its management or leadership structure.

12VAC35-105-210. Fiscal accountability.

A. The provider shall document financial ~~resources to operate its services or facilities or shall have a line of credit sufficient to cover 90 days of operating expense, based on a working budget showing projected revenue and expenses~~ arrangements or a line of credit that are adequate to ensure maintenance of ongoing operations for at least 90 days on an ongoing basis. The amount needed shall be based on a working budget showing projected revenue and expenses.

B. At the end of each fiscal year, the provider shall prepare, according to generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the State Auditor of Public Accounts:

1. An operating statement showing revenue and expenses for the fiscal year just ended.

2. A balance sheet showing assets and liabilities for the fiscal year just ended. ~~At least once every three years, all financial records shall be audited by~~ The department may require an audit of all financial records by an independent Certified Public Accountant (CPA) or ~~audited~~ as otherwise provided by law or regulation.

3. Providers operating as a part of a local government agency are ~~excluded from providing~~ not required to provide a balance sheet; however, they shall provide a financial statement.

C. The provider shall have written internal controls to minimize the risk of theft or embezzlement of provider funds.

D. The provider shall identify in writing the title and qualifications of the person who has the authority and responsibility for the fiscal management of its services. At a minimum, the person who has the authority and responsibility for ~~the~~ fiscal management ~~of the provider~~ shall be bonded or otherwise indemnified.

12VAC35-105-220. Indemnity coverage.

To protect the interests of individuals, employees, and the provider from risks of liability, there shall be indemnity coverage to include:

1. General liability;

2. Professional liability;

3. ~~Vehicular~~ Commercial vehicular liability; and

4. Property damage.

12VAC35-105-230. Written fee schedule.

If the provider charges for services, the written schedule of rates and charges shall be available to the individual or authorized representative upon request.

12VAC35-105-240. Policy on funds of individuals receiving services.

A. The provider shall establish and implement a ~~written~~ policy for handling funds of individuals receiving services, including providing for separate accounting of individual funds.

B. The provider shall have documented financial controls to minimize the risk of theft or embezzlement of funds of individuals receiving services.

C. The provider shall purchase a surety bond or otherwise provide assurance for the security of all funds of individuals receiving services deposited with the provider.

Article 2
Physical Environment

12VAC35-105-260. Building inspection and classification.

All locations shall be inspected and approved as required by the appropriate building regulatory entity. ~~Approval~~ Documentation of approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose. The provider shall submit a copy of the Certificate of Use and Occupancy to the department for new locations. This section does not apply to correctional facilities or home and noncenter-based services. Sponsored residential ~~services~~ service providers shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

12VAC35-105-265. Floor plans.

All services shall submit floor plans with room dimensions to the department for new locations. This does not apply to home or noncenter-based services.

12VAC35-105-270. Building modifications.

A. ~~Building~~ The provider shall submit building plans and specifications for ~~new~~ any planned construction ~~of locations, change in~~ at a new location, changes in the use of existing locations, and any structural modifications or additions to existing locations where services are provided ~~shall be submitted~~ for review by the department to determine compliance with the licensing regulations. This section does not apply to correctional facilities, jails, or home and noncenter-based services.

B. ~~An~~ The provider shall submit an interim plan to the department addressing safety and continued service delivery ~~shall be required for new~~ if new construction ~~or for conversion,~~ involving structural modifications or additions to existing buildings is planned.

12VAC35-105-280. Physical environment.

A. The physical environment, design, structure, furnishings, and lighting shall be appropriate to the ~~population~~ individuals served and the services provided ~~and~~.

B. The physical environment shall be accessible to individuals with physical and sensory disabilities.

~~B.~~ C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

~~C. The physical environment, design, structure, furnishing, and lighting shall be appropriate to the population served and the services provided.~~

D. Floor surfaces and floor ~~covering~~ coverings shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions.

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of 100-120°F. If temperatures cannot be maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.

H. Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

I. If smoking is permitted, the provider shall make provisions for alternate smoking areas that are separate from the service environment. This regulation does not apply to home-based services.

J. For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

K. This ~~section~~ regulation does not apply to home and noncenter-based services. Sponsored residential services shall certify compliance of sponsored residential homes with this regulation.

12VAC35-105-290. Food service inspections.

Any location where the provider is responsible for preparing or serving food shall request inspection and obtain approval by state or local health authorities regarding food service and general sanitation at the time of the original application and annually thereafter. Documentation of the most recent three inspections and approval shall be kept on file. This regulation does not apply to sponsored residential services or to group homes or community residential homes.

12VAC35-105-300. Sewer and water inspections.

A. ~~A location~~ Service locations shall ~~either~~ be on a public water and sewage ~~systems~~ system or ~~the location's~~ on a nonpublic water and sewage system ~~shall be inspected and approved by state or local health authorities at the time of its original application and annually thereafter. Documentation of the three most recent inspections and approval shall be kept on file~~. ~~Sponsored~~ Prior to a location being licensed, the provider shall obtain the report from the building inspector pertaining to the septic system and its capacity. Nonpublic water and sewer systems shall be maintained in good working order and in compliance with local and state laws. Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

B. ~~A location that is~~ Service locations that are not on a public water system shall have a water sample tested prior to being licensed and annually by an accredited, independent laboratory for the absence of chloroform. The water sample shall also be tested for lead or nitrates if recommended by the local health department. Documentation of the three most recent inspections shall be kept on file.

12VAC35-105-310. Weapons.

The provider or facility shall have and implement a written policy governing the use and possession of firearms, pellet guns, air rifles and other weapons on the ~~facility's~~ premises of the provider's services. The policy shall provide that no firearms, pellet guns, air rifles and other weapons ~~on the facility's premises~~ shall be permitted unless the weapons are:

1. In the possession of licensed security or sworn law-enforcement personnel;

2. Kept securely under lock and key; or

3. Used under the supervision of a responsible adult in accordance with policies and procedures developed by the ~~facility~~ provider for the weapons' lawful and safe use.

12VAC35-105-320. Fire inspections.

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in residential service locations ~~with more than eight beds~~ serving more than eight individuals are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51). This section does not apply to correctional facilities or home and noncenter-based or sponsored residential home services.

12VAC35-105-325. Community liaison.

Each residential service shall designate a staff person as a community liaison responsible for facilitating cooperative relationships with neighbors, local law-enforcement personnel, local government officials, and the community at large.

Article 3
Physical Environment of Residential/Inpatient Service Locations

12VAC35-105-330. Beds.

A. The provider shall not operate more beds than the number for which its service location or locations are licensed.

B. A community ~~intermediate care facility for the mentally retarded~~ ICF/MR may not have more than ~~20~~ 12 beds at any one location. This applies to new applications for services ~~after September 19, 2002~~ and not to existing services or locations licensed prior to [the effective date of these regulations].

12VAC35-105-340. Bedrooms.

A. ~~Size of bedrooms~~ Bedrooms shall meet the following square footage requirements~~.~~:

1. Single occupancy bedrooms shall have no less than 80 square feet of floor space.

2. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per individual.

3. This subsection does not apply to community gero-psychiatric residential services.

B. No more than four individuals shall share a bedroom, except in group homes where no more than two individuals shall share a room. This does not apply to group home locations licensed prior to [the effective date of these regulations].

C. Each individual shall ~~be assigned~~ have adequate storage space accessible to the bedroom for clothing and personal belongings.

D. This section does not apply to correctional facilities and jails. ~~Sponsored~~ Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

12VAC35-105-350. Condition of beds.

Beds shall be clean, comfortable, and equipped with a mattress, pillow, blankets, and bed linens. When a bed is soiled, providers shall assist individuals with bathing as needed, and provide clean clothing and bed linen. ~~Sponsored~~ Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

12VAC35-105-360. Privacy.

A. Bedroom and bathroom windows and doors shall provide privacy.

B. Bathrooms not intended for individual use shall provide privacy for showers and toilets.

C. No required path of travel to the bathroom shall be through another bedroom.

D. This section does not apply to correctional facilities and jails. ~~Sponsored~~ Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

12VAC35-105-370. Ratios of toilets, basins and showers or baths.

For all residential and inpatient locations established, constructed or reconstructed after January 13, 1995, there shall be at least one toilet, one hand basin, and shower or bath for every four individuals. ~~Sponsored~~ This section does not apply to correctional facilities or jails. Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation. ~~This section does not apply to correctional facilities or jails.~~

12VAC35-105-380. Lighting.

Each service location shall have adequate lighting in halls and bathrooms at night. ~~Sponsored~~ Providers of sponsored residential home services shall certify ~~compliance of~~ that their sponsored residential homes comply with this regulation.

Article 4
Human Resources

12VAC35-105-390. Confidentiality and security of personnel records.

A. The provider shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

B. Physical and data security controls shall exist for ~~electronic records~~ personnel records maintained in electronic databases.

C. Providers shall comply with requirements of the ~~American~~ Americans with Disabilities Act and the Virginians with Disabilities Act regarding retention of employee health-related information in a file separate from personnel files.

12VAC35-105-400. Criminal registry checks.

A. ~~The provider shall develop a policy for the criminal history and registry checks for all employees, contractors, students and volunteers. The policy shall contain, at a minimum, a disclosure statement concerning whether the person has ever been convicted of or is the subject of pending charges for any offense~~ Providers shall comply with the background check requirements for direct care positions outlined in § 37.2-416 of the Code of Virginia for individuals hired after July 1, 1999.

B. ~~After July 1, 1999, providers shall comply with the background check requirements for direct care positions outlined in § 37.1-183.3 of the Code of Virginia~~ Prior to a new employee beginning his duties, the provider shall obtain

the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Virginia Department of Social Services.

C. The provider shall ~~submit all information required by the department to complete the background checks for all employees, and for contractors, students and volunteers, if required by the provider's policy~~ develop a policy for criminal history and registry checks for all employees, contractors, students, and volunteers. The policy shall require at a minimum a disclosure statement from the employee, contractor, student, or volunteer stating whether the person has ever been convicted of or is the subject of pending charges for any offense and shall address what actions the provider will take should it be discovered that an employee, student, contractor, or volunteer has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

D. ~~Prior to a new employee beginning his duties, the provider shall obtain the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services. Results of the search of the registry shall be maintained in the employee's personnel record~~ The provider shall submit all information required by the department to complete the background and registry checks for all employees and for contractors, students, and volunteers if required by the provider's policy.

E. The provider shall maintain the following documentation:

1. The disclosure statement; and

2. Documentation that the provider submitted all information required by the department to complete the background and registry checks, ~~and~~ memoranda from the department transmitting the results to the provider, and the results from the Child Protective Registry check.

12VAC35-105-410. Job description.

A. Each employee or contractor shall have a written job description that includes:

1. Job title;

2. Duties and responsibilities required of the position;

3. Job title of the immediate supervisor; and

4. Minimum knowledge, skills, and abilities, experience or professional qualifications required for entry level as specified in 12VAC35-105-420.

B. Employees or contractors shall have access to their current job description. ~~There~~ The provider shall ~~be a~~ have written documentation of the mechanism ~~for advising~~ used to advise employees or contractors of changes to their job responsibilities.

12VAC35-105-420. Qualifications of employees or contractors.

A. Any person who assumes the responsibilities of any ~~employee~~ position as an employee or a contractor shall meet the minimum qualifications of that position as determined by job descriptions.

B. Employees and contractors shall comply, as required, with the regulations of the Department of Health Professions. The provider shall design ~~and~~, implement ~~a mechanism~~, and document the process used to verify professional credentials.

C. ~~Service directors~~ Supervisors shall have experience in working with ~~the population~~ individuals being served and in providing the services outlined in the service description.

D. Job descriptions shall include minimum knowledge, skills and abilities, professional ~~qualification~~ qualifications and experience appropriate to the duties and responsibilities required of the position.

12VAC35-105-430. Employee or contractor personnel records.

A. Employee or contractor personnel ~~record~~ records, whether hard-copy or electronic, shall include:

1. ~~Identifying~~ Individual identifying information;

2. Education and training history;

3. Employment history;

4. Results of ~~the~~ any provider credentialing process including methods of verification of applicable professional licenses or certificates;

5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;

6. Results of the required criminal background checks and ~~a search~~ searches of the registry of founded complaints of child abuse and neglect~~, if any~~;

7. Results of performance evaluations;

8. A record of disciplinary action taken by the provider, if any;

9. A record of adverse action by any licensing and oversight bodies ~~and~~ or organizations ~~and state human rights regulations~~, if any; and

10. A record of participation in employee development activities, including orientation.

B. Each employee or contractor personnel record shall be retained in its entirety for a minimum of three years after the employee's or contractor's termination of employment.

12VAC35-105-440. Orientation of new employees, contractors, volunteers, and students.

New employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. ~~Orientation to~~ The provider shall document that the orientation covers each of the following policies ~~shall be documented. Orientation shall include~~, procedures, and practices:

1. Objectives and philosophy of the provider;

2. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;

3. Practices that assure an individual's rights including orientation to human rights regulations;

4. Applicable personnel policies;

5. Emergency preparedness procedures;

6. Infection control practices and measures; and

7. Other policies and procedures that apply to specific positions and specific duties and responsibilities.

12VAC35-105-450. Employee training and development.

The provider shall provide training and development opportunities for employees to enable them to ~~perform~~ fully support the individuals served and to carry out the responsibilities of their ~~job~~ jobs. The provider shall develop a training policy ~~must address~~ that addresses the frequency of retraining on medication administration, behavior management, and emergency preparedness. ~~Training~~ Employee participation in training and development opportunities shall be documented ~~in the employee personnel records~~ and accessible to the department.

12VAC35-105-460. Emergency medical or first aid training.

There shall be at least one employee or contractor on duty at each location who holds a current certificate, issued by a recognized authority, in standard first aid and cardiopulmonary resuscitation, or with emergency medical training. A nurse or physician who holds a current professional license shall be deemed to hold a current certificate in first aid, but not in CPR.

12VAC35-105-470. Notification of policy changes.

All employees or contractors shall be kept informed of policy changes that affect performance of duties. The provider shall have written documentation of the process used to advise employees or contractors of policy changes.

12VAC35-105-480. Employee or contractor performance evaluation.

A. The provider shall develop and implement a policy for evaluating employee ~~or~~ and contractor performance.

B. Employee development needs and plans shall be a part of the performance evaluation.

C. The provider shall evaluate employee ~~or~~ and contractor performance at least annually.

12VAC35-105-490. Written grievance policy.

The provider shall have a written grievance policy and ~~a mechanism to~~ shall inform employees of grievance procedures. The provider shall have documentation of the process used to advise employees of grievance procedures.

12VAC35-105-500. Students and volunteers.

A. The provider shall have and implement a ~~written~~ policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers including selection and supervision.

B. The provider shall not rely on students or volunteers for the provision of direct care services. The provider staffing plan shall not include volunteers or students.

12VAC35-105-510. Tuberculosis screening.

A. Each new employee, contractor, student or volunteer who will have direct contact with individuals ~~being served~~ receiving services shall obtain a statement of certification by a qualified licensed practitioner indicating the absence of tuberculosis in a communicable form within 30 days of employment or initial contact with individuals receiving services. The employee shall submit a copy of the original screening to the provider. A statement of certification shall not be required for ~~an~~ a new employee who has separated from service with another licensed provider with a break in service of six months or less or who is currently working for another licensed provider. ~~The employee must submit a copy of the original screening to the provider.~~

B. All employees, contractors, students or volunteers in substance abuse co-occurring outpatient or ~~substance abuse~~ residential treatment services shall be certified as tuberculosis free on an annual basis by a qualified licensed practitioner.

C. Any employee, contractor, student or volunteer who comes in contact with a known case of active tuberculosis disease or who develops symptoms of active tuberculosis disease (including, but not limited to fever, chills, hemoptysis, cough, fatigue, night sweats, weight loss or anorexia) of three weeks duration shall be screened as determined appropriate for continued contact with employees, contractors, students, volunteers, or individuals receiving services based on consultation with the local health department.

D. An employee, contractor, student or volunteer suspected of having active tuberculosis shall not be permitted to return to work or have contact with employees, contractors, students, volunteers or individuals receiving services until a physician has determined that the person is free of active tuberculosis.

Article 5
Health and Safety Management

12VAC35-105-520. Risk management.

A. The provider shall designate a person responsible for risk management.

B. The provider shall document and implement a plan to identify, monitor, reduce and minimize risks associated with personal injury, infectious disease, property damage or loss, and other sources of potential liability.

C. ~~As part of the plan, the~~ The provider shall conduct and document that a safety inspection has been performed at least annually ~~its own safety inspections~~ of ~~all~~ each service ~~locations~~ location owned, rented, or leased by the provider. Recommendations for safety improvement shall be documented and implemented by the provider.

D. The provider shall document serious injuries to employees, contractors, students, volunteers and visitors. Documentation shall be kept on file for three years. The provider shall evaluate injuries at least annually. Recommendations for improvement shall be documented and implemented by the provider.

~~E. The risk management plan shall establish and implement policies to identify any populations at risk for falls and to develop a prevention/management program.~~

~~F. The provider shall develop, document and implement infection control measures, including the use of universal precautions.~~

12VAC35-105-530. Emergency preparedness and response plan.

A. The provider shall develop a written emergency preparedness and response plan for all of a provider's services and locations that describes its approach to emergencies throughout the organization or community. This plan shall include an analysis of potential emergencies that could disrupt the normal course of service delivery including emergencies that would require expanded or extended care over a prolonged period of time. The plan shall address:

1. Specific procedures describing mitigation, preparedness, response and recovery strategies, actions, and responsibilities for each emergency.

2. Documentation of ~~contact~~ involvement with the local emergency ~~coordinator~~ authorities to determine local disaster risks and community-wide plans to address different disasters and emergency situations.

~~2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery.~~

3. The process for notifying local and state authorities of the emergency and a process for contacting staff when emergency response measures are initiated.

4. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors and individuals receiving services, property protection, community outreach, and recovery and restoration.

~~4.~~ 5. Written emergency response procedures for initiating the response and recovery phase of the plan including a description of how, when, and by whom the phases will be activated. This includes assessing the situation; protecting individuals receiving services, employees, contractors, students, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. ~~Communicating with employees, contractors and community responders~~ Warning and notification of individuals receiving services;

b. ~~Warning and notification of individuals receiving services~~ Communicating with employees, contractors, and community responders;

c. Designating alternative roles and responsibilities of staff during emergencies including to whom they will report in the provider's organization command structure and when activated in the community's command structure;

d. Providing emergency access to secure areas and opening locked doors;

~~d.~~ e. Conducting evacuations to emergency shelters or alternative sites and accounting for all individuals receiving services;

~~e.~~ f. Relocating individuals receiving residential or inpatient services, if necessary;

~~f.~~ g. Notifying family members ~~and legal guardians~~ or authorized representatives;

~~g.~~ h. Alerting emergency personnel and sounding alarms;

~~h.~~ i. Locating and shutting off utilities when necessary; and

j. Maintaining a 24 hour telephone answering capability to respond to emergencies for individuals receiving services.

6. Processes for managing the following under emergency conditions:

a. Activities related to the provision of care, treatment, and services including but not limited to scheduling, modifying, or discontinuing services; controlling information about individuals receiving services; providing medication; and transportation services;

b. Logistics related to critical supplies such as pharmaceuticals, food, linen, and water;

c. Security including access, crowd control, and traffic control; and

d. Back-up communication systems in the event of electronic or power failure.

7. Specific processes and protocols for evacuation of the provider's building or premises when the environment cannot support adequate care, treatment, and services.

~~5.~~ 8. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.

~~6.~~ 9. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop and implement ~~periodic~~ annual emergency preparedness and response training for all employees, individuals receiving services, contractors, students, and volunteers. ~~Training~~ This training shall also be provided as part of orientation for new employees and cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of individuals with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency medical information for individuals receiving services; and

5. Utilizing community support services.

C. The provider shall review the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students ~~and~~, volunteers, and individuals receiving services and incorporated into training for employees, contractors, students and volunteers and orientation of individuals to services.

D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of individuals, the provider shall take appropriate action to protect the health, safety and welfare of the individuals receiving services and take appropriate actions to remedy the conditions as soon as possible.

E. Employees, contractors, students and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency. The plan shall include a policy regarding ~~periodic~~ regularly scheduled emergency preparedness training for all employees, contractors, students and volunteers.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of individuals, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider should report the disaster/emergency to the department, but no later than ~~72~~ 24 hours after the incident occurs.

G. Providers of residential services shall have at all times a three-day supply of emergency food and water for all residents and staff. Emergency food supplies should include foods that do not require cooking. Water supplies shall include one gallon of water, per person, per day.

H. This ~~section~~ regulation does not apply to home and noncenter-based services.

12VAC35-105-540. Access to telephone in emergencies; emergency telephone numbers.

A. Telephones shall be accessible for emergency purposes.

B. ~~Current emergency telephone numbers and location of the nearest hospital, ambulance service, rescue squad and other trained medical personnel, poison control center, fire station and the police are prominently posted near the telephones~~ Instructions for contacting emergency services and telephone numbers shall be prominently posted near the telephone including directions to the nearest hospital and how to contact provider medical personnel if appropriate.

C. This ~~section~~ regulation does not apply to home and noncenter-based services and correctional facilities.

12VAC35-105-550. First aid kit accessible.

A. A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies at each service location and to employees or contractors providing in-home services or traveling with individuals. The minimum requirements of a well-stocked first aid kit that shall be maintained include a thermometer, bandages, saline solution, band-aids, sterile gauze, tweezers, instant ice-pack, adhesive tape, first-aid cream, and antiseptic soap~~, an accessible, unexpired 30 cc bottle of Syrup of Ipecac (for use at the direction of the Poison Control Center or a physician),~~

~~and activated charcoal (for use at the direction of the Poison Control Center or a physician)~~.

B. A cardiopulmonary resuscitation (CPR) face guard or mask shall be readily accessible.

12VAC35-105-560. Operable flashlights or battery lanterns.

Operable flashlights or battery lanterns shall be readily accessible to employees and contractors in services that operate between dusk and dawn to use in emergencies. This ~~section~~ regulation does not apply to home and noncenter-based services.

12VAC35-105-580. Service description requirements.

A. The provider shall develop, implement, review and revise its descriptions of services offered according to the provider's mission and shall ~~have that information~~ make service descriptions available for public review.

B. The provider shall ~~document that~~ outline how each service offers a structured program of ~~care~~ individualized interventions and care designed to meet the individuals' physical and emotional needs; provide protection, guidance and supervision; and meet the objectives of any required service plan.

C. The provider shall prepare a written description of each service it offers. ~~Service description elements~~ Elements of each service description shall include:

1. ~~Goals~~ Service goals;

2. ~~Care~~ A description of care, treatment, training, ~~habilitation,~~ or other supports provided;

3. Characteristics and needs of ~~the population~~ individuals to be served;

4. Contract services, if any;

5. ~~Admission~~ Eligibility requirements and admission, continued stay, and exclusion criteria;

6. ~~Termination of treatment~~ Service termination and discharge or transition criteria; and

7. Type and role of employees or contractors.

D. The provider shall revise ~~a~~ the written service description whenever the service description changes.

E. The provider shall not implement services that are inconsistent with its most current service description.

F. The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for which staffing levels and types meet the needs of the individuals served.

G. The provider shall provide for the physical separation of children and adults in residential and inpatient services and shall provide separate group programming for adults and children, except in the case of family services. The provider shall provide for the safety of children accompanying parents receiving services. Older adolescents transitioning from school to adult activities may participate in mental retardation (intellectual disability) day support services with adults.

~~G. If the provider offers substance abuse treatment services, the~~ H. The service description for substance abuse treatment services shall address the timely and appropriate treatment of substance abusing pregnant women.

I. If the provider plans to serve individuals as of a result of a temporary detention order to a service, prior to admitting those individuals to that service, the provider shall submit a written plan for adequate staffing and security measures to ensure the individual can be served safely within the service to the department for approval. If approved the department will add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.

J. The provider shall have a written plan on cultural and linguistic competency that assists the organization in delivering culturally competent services and use the National Standards on Culturally and Linguistically Appropriate Services (CLAS) as a primary guidance document.

12VAC35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan ~~including~~ that includes the ~~type~~ types and ~~role~~ roles and numbers of employees and contractors ~~that reflects the~~ required to provide the service. This staffing plan shall reflect the:

1. Needs of the ~~population~~ individuals served;

2. Types of services offered;

3. The service description; and

4. ~~The number~~ Number of people to be served at a given time.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements ~~relate~~ related to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns ~~are to~~ will be supervised in the staffing plan and how that supervision will be documented.

2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. ~~In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental~~

~~retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with equivalent experience. Supervision of Brain Injury Waiver services or residential services shall be performed by a QBIP or an employee or contractor with equivalent experience.~~

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who ~~is a QMHP, QMRP, QDDP, or QBIP or who has equivalent experience~~ meets the qualification for supervision as defined in this regulation.

5. Supervision of mental health and substance abuse services and co-occurring disorders shall be provided by a person who is trained and experienced in providing psychiatric, mental health, or substance abuse services to individuals who have a psychiatric or substance abuse disorder diagnosis including (i) a doctor of medicine or osteopathy; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described); (v) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional with at least one year of clinical experience.

6. Supervision of mental retardation (intellectual disability) services shall be provided by a person with at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and holds at least a bachelor's degree in a human services field including but not limited to sociology, social work, special education, rehabilitation counseling, nursing, or psychology.

7. Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have related conditions and is one of the following: a doctor of medicine or osteopathy; a registered nurse; or a person holding at least a bachelor's degree in a human service field including but not limited to sociology, social work, special education, rehabilitation counseling, or psychology.

8. Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

9. Providers of intensive in-home services shall define the nature and frequency of supervision by the LMHP provided to employees working directly with individuals receiving services. The LMHP shall provide direct supervision to these employees at least bi-weekly.

10. Individuals employed as supervisors prior to [the effective date of these regulations] may supervise services based on their experience.

11. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who meets the qualifications for supervision as defined in these regulations.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs~~,~~ ; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. ~~The provider~~ Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff ~~in~~ who provide brain injury services shall ~~meet the qualifications of a QPPBI and successfully complete~~

~~an approved training curriculum on brain injuries within six months of employment~~ have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-600. Nutrition.

A. A provider preparing and serving food shall:

1. ~~Have~~ Implement a written plan for the provision of food services, which ensures access to nourishing, well-balanced, healthful meals;

2. Make reasonable efforts to prepare meals that consider cultural background, personal preferences, and food habits and that meet the dietary needs of the individuals served; and

3. Assist individuals who require assistance feeding themselves in a manner that effectively addresses any deficits.

B. Providers of residential and inpatient services shall develop and implement a policy to monitor each individual's food consumption for:

1. Warning signs of changes in physical or mental status related to nutrition; and

2. Compliance with any needs determined by the individualized services plan or prescribed by a physician, nutritionist or health care professional.

12VAC35-105-610. Community participation.

~~Opportunities shall be provided for individuals receiving services~~ Individuals receiving residential, day support, and day treatment services shall be afforded the opportunity to participate in community activities. ~~This regulation applies to residential, day support and day treatment services.~~ The provider shall have written documentation that such opportunities were made available to individuals served.

12VAC35-105-620. Monitoring and evaluating service quality.

The provider shall have ~~a mechanism~~ written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and ongoing basis. Input from individuals receiving services and their authorized representatives, if applicable, about services used and satisfaction level of participation in the direction of service planning shall be part of the provider's quality assurance system. The provider shall implement improvements, when indicated.

Article 2
Screening, Admission, Assessment, Service Planning and Orientation

12VAC35-105-630. ~~Policies on screening, admission and referrals.~~ (Repealed.)

~~A. The provider shall establish written criteria for admission that include:~~

~~1. A description of the population to be served;~~

~~2. A description of the types of services offered; and~~

~~3. Exclusion criteria.~~

~~B. The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for which staffing levels and types meet the needs of the individuals served.~~

~~C. The provider shall complete a preliminary assessment detailed enough to determine that the individual qualifies for admission and to develop a preliminary individualized services plan for individuals admitted to services. Employee or contractors responsible for screening, admitting and referral shall have immediate access to written service descriptions and admission criteria.~~

~~D. The provider shall assist individuals who are not admitted to identify other appropriate services.~~

~~E. The provider shall develop and implement procedures for screening, admitting, and referring individuals to services, to include staff who are designated to perform these activities.~~

12VAC35-105-640. ~~Screening and referral services documentation and retention.~~ (Repealed.)

~~A. The provider shall maintain written documentation of each screening performed, including:~~

~~1. Date of initial contact;~~

~~2. Name, age, and gender of the individual;~~

~~3. Address and phone number, if applicable;~~

~~4. Presenting needs or situation to include psychiatric/medical problems, current medications and history of medical care;~~

~~5. Name of screening employee or contractor;~~

~~6. Method of screening;~~

~~7. Screening recommendation; and~~

~~8. Disposition of individual.~~

~~B. The provider shall retain documentation for each screening. For individuals not admitted, documentation shall be retained for six months. Documentation shall be included in the individual's record if the individual is admitted.~~

12VAC35-105-645. Initial contacts, screening, admission, assessment, service planning, orientation, and discharge.

A. The provider shall develop and implement policies and procedures for initial contacts and screening, admissions, and referral of individuals to other services and designate staff to perform these activities.

B. The provider shall maintain written documentation of an individual's initial contact and screening prior to his admission including the:

1. Date of contact;

2. Name, age, and gender of the individual;

3. Address and telephone number of the individual, if applicable;

4. Reason why the individual is requesting services; and

5. Disposition of the individual including his referral to other services for further assessment, placement on a waiting list for service, or admission to the service.

C. The provider shall assist individuals who are not admitted to identify other appropriate services.

D. The provider shall retain documentation of the individual's initial contacts and screening for six months. Documentation shall be included in the individual's record if the individual is admitted to the service.

12VAC35-105-650. Assessment policy.

A. The provider shall ~~document~~ develop and implement ~~an~~ a written assessment policy. The policy shall define how assessments will be documented.

~~B. The provider shall conduct an assessment to identify an individual's physical, medical, behavioral, functional, and social strengths, preferences and needs, as applicable. The assessment shall address:~~

~~1. Onset/duration of problems;~~

~~2. Social/behavioral/developmental/family history;~~

~~3. Employment/vocation/educational background;~~

~~4. Previous interventions/outcomes;~~

~~5. Financial resources and benefits;~~

~~6. Health history and current medical care needs;~~

~~7. Legal status, including guardianship, commitment and representative payee status, and relevant criminal charges or convictions, probation or parole status;~~

~~8. Daily living skills;~~

~~9. Social/family supports;~~

~~10. Housing arrangements; and~~

~~11. Ability to access services.~~

B. The provider shall solicit the individual's own assessment and shall actively involve the individual and authorized representative, if applicable, in the preparation of initial and comprehensive assessments and in subsequent reassessments. In these assessments and reassessments the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The assessment policy shall designate employees or contractors who are responsible for conducting assessments. ~~Employees or contractors responsible for assessments~~ These employees or contractors shall have experience in working with the ~~population~~ needs of individuals who are being assessed ~~and with,~~ the assessment tool or tools being utilized, and the provision of services that the individuals may require.

~~D. Frequency of assessments.~~

~~1. A preliminary assessment shall be done prior to admission;~~

~~2. The preliminary assessment shall be updated and finalized during the first 30 days of service prior to completing the individualized services plan. Longer term assessments may be included as part of the individualized services plan. The provider shall document the reason for assessments requiring more than 30 days.~~

~~3. Reassessments shall be completed when there is a need based on the medical, psychiatric or behavioral status of the individual and at least annually.~~

~~E.~~ D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments.

E. An initial assessment shall be completed prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete an initial assessment detailed enough to determine whether the individual qualifies for admission and to develop an initial ISP for those individuals who are admitted to the service. This initial assessment shall assess immediate service, health and safety needs, and at a minimum address the individual's:

1. Diagnosis;

2. Presenting needs including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of problems;

3. Current medical problems;

4. Current medications;

5. Current and past substance use or abuse, including co-occurring mental health and substance abuse disorders; and

6. At-risk behavior to self and others.

F. A comprehensive assessment shall update and finalize the initial assessment. The timing for completion of the

comprehensive assessment shall be based upon the nature and scope of the service but shall occur no later than 60 days after admission. It shall address:

1. Onset and duration of problems;

2. Social, behavioral, developmental and family history and supports;

3. Cognitive functioning including strengths and weaknesses;

4. Employment, vocation and educational background;

5. Previous interventions and outcomes;

6. Financial resources and benefits;

7. Health history and current medical care needs, to include:

a. Allergies;

b. Recent physical complaints and medical conditions;

c. Nutritional needs;

d. Chronic conditions;

e. Communicable diseases;

f. Restrictions on physical activities if any;

g. Past serious illnesses, serious injuries, and hospitalizations;

h. Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household;

i. Current and past substance usage including alcohol, prescription and nonprescription medications, and illicit drugs; and

j. Reproductive history including pregnancy status.

8. Psychiatric and substance use issues including current mental health or substance use needs, presence of co-occurring disorders, history of substance use or abuse, and circumstances that increase the individual's risk for mental health or substance use issues;

9. History of abuse, neglect, sexual and domestic violence, or trauma including psychological trauma;

10. Legal status including guardianship, commitment, and representative payee status;

11. Relevant criminal charges or convictions and probation or parole status;

12. Daily living skills;

13. Housing arrangements;

14. Ability to access services including transportation needs; and

15. As applicable, and in all residential services, fall risk, communication methods or needs, and mobility and adaptive equipment needs.

G. Providers of short-term intensive services including inpatient and crisis stabilization services shall develop policies for completing comprehensive assessments within the time frames appropriate for those services.

H. Providers of non-intensive or short-term services shall meet the requirements for the initial assessment at a minimum. Non-intensive services are services provided in jails, nursing homes, or other locations when access to records and information is limited by the location and nature of the services. Short-term services typically are provided for less than 60 days.

I. Providers may utilize standardized state or federally sanctioned assessment tools that do not meet all the criteria of 12VAC35-105-650 as the initial or comprehensive assessment tools as long as the tools assess the individual's health and safety issues and substantially meet the requirements of this regulation.

J. Individuals who receive medication-only services shall be reassessed at least annually to determine whether there is a change in the need for additional services and the effectiveness of the medication.

K. The provider shall retain documentation for each assessment for a period of six months. Documentation shall be included in the individual's record if the individual is admitted.

L. The provider shall assist individuals who are not scheduled for further assessment or who are not admitted to identify other appropriate services.

12VAC35-105-660. Individualized services plan (ISP).

A. The provider shall ~~develop a preliminary individualized services plan for the first 30 days. The preliminary individualized services plan shall be developed and implemented within 24 hours of admission and shall continue in effect until the individualized services plan is developed or the individual is discharged, whichever comes first~~ actively involve the individual and authorized representative, as appropriate, in the development, review, and revision of a person-centered ISP. The individualized services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors.

B. The provider shall develop an ~~individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals. Services requiring longer term assessments may include the~~

~~completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment~~ initial person-centered ISP for the first 60 days. This ISP shall be developed and implemented within 24 hours of admission to address immediate service, health, and safety needs and shall continue in effect until the ISP is developed or the individual is discharged, whichever comes first.

~~C. The individualized services plan shall address:~~

~~1. The individual's needs and preferences.~~

~~2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;~~

~~3. Individualized strategies, including the intensity of services needed;~~

~~4. A communication plan for individuals with communication barriers, including language barriers; and~~

~~5. The behavior treatment plan, if applicable.~~

~~D. The provider shall comply with the human rights regulations in regard to participation in decision making by the individual or legally authorized representative in developing or revising the individualized services plan.~~

~~E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12VAC35-115-60) and the rights of minors.~~

~~F. Employees or contractors responsible for implementation of an individualized services plan shall demonstrate a working knowledge of the plan's goals, objectives and strategies.~~

~~G. The provider shall designate a person who will develop and implement individualized service plans.~~

~~H. The provider shall implement the individualized services plan and review it at least every three months or whenever there is a revised assessment. These reviews shall evaluate the individual's progress toward meeting the plan's objectives. The goals, objectives and strategies of the individualized services plan shall be updated, if indicated.~~

~~I. The individualized service plan shall be consistent with the CSP for individuals served by the IFDDS Waiver.~~

~~J. In brain injury services, the individualized services plan shall be reassessed and revised more frequently than annually, consistent with the individual's course of recovery.~~

C. The provider shall develop and implement a person-centered comprehensive ISP as soon as possible after admission based upon the nature and scope of services but no later than 60 days after admission.

12VAC35-105-665. ISP requirements.

A. The comprehensive ISP shall address or include:

1. The individual's needs, strengths, abilities, personal preferences, goals, and natural supports;

2. A summary of or reference to the assessment;

3. Relevant and attainable goals, measurable objectives, and specific strategies for addressing each identifiable need;

4. Services and supports and frequency of services required to accomplish the goals including relevant psychological, mental health, substance abuse, behavioral, medical, rehabilitation, training, and nursing needs and supports as indicated by the assessment;

5. The role of the individual and others in implementing the service plan;

6. A communication plan for individuals with communication barriers, including language barriers;

7. A behavior support or treatment plan, if applicable;

8. A safety plan that addresses identified risks to the individual or to others, including a fall risk plan;

9. A crisis or relapse plan, if applicable;

10. Target dates for accomplishment of goals and objectives and estimated duration of ISP;

11. Discharge goals, if applicable;

12. Identification of employees or contractors responsible for coordination and integration of services, including employees of other agencies; and

13. Recovery plans.

B. The ISP shall be signed and dated at a minimum by the person responsible for implementing the plan and the individual receiving services or the authorized representative. If the signature of the individual receiving services or the authorized representative cannot be obtained the provider shall document his attempt to attain the necessary signature and the reason why he was unable to obtain it.

C. The provider shall designate a person who will be responsible for developing, implementing, reviewing, and revising each individual's ISP in collaboration with the individual or authorized representative, as appropriate.

D. Employees or contractors who are responsible for implementing the ISP shall demonstrate a working

knowledge of the objectives and strategies contained in the individual's current ISP.

E. Providers of short-term intensive services such as inpatient and crisis stabilization services that are typically provided for less than 30 days shall develop and implement a policy to develop an ISP within a timeframe consistent with the length of stay of individuals.

F. The ISP shall be consistent with the plan of care for individuals served by the IFDDS Waiver.

G. When a provider provides more than one service to an individual the provider may maintain a single ISP document that contains individualized objectives and strategies for each service provided.

H. Whenever possible the identified goals in the ISP shall be written in the words of the individual receiving services.

12VAC35-105-670. ~~Individualized services plan requirements.~~ (Repealed.)

~~A. The individualized services plan shall include, at a minimum:~~

~~1. A summary or reference to the assessment;~~

~~2. Goals and measurable objectives for addressing each identified need;~~

~~3. The services and supports and frequency of service to accomplish the goals and objectives;~~

~~4. Target dates for accomplishment of goals and objectives;~~

~~5. Estimated duration of service plan;~~

~~6. Discharge plan, where applicable; and~~

~~7. The employees or contractors responsible for coordination and integration of services, including employees of other agencies.~~

~~B. The individualized services plan shall be signed and dated, at a minimum, by the person responsible for implementing the plan and the individual receiving services or the legally authorized representative. If unable to obtain the signature of the individual receiving services or the legally authorized representative, the provider shall document the reason.~~

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall update the ISP at least annually. The provider shall review the ISP at least every three months or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.

12VAC35-105-680. Progress notes or other documentation.

The provider shall use signed and dated progress notes or other documentation to document the services provided, and the implementation of and outcomes ~~of individualized services plans~~ contained in the ISP.

12VAC35-105-690. Orientation.

A. The provider shall develop and implement a written policy regarding the orientation of individuals and ~~the legally~~ their authorized ~~representative~~ representatives, if applicable to services.

B. ~~At a minimum,~~ As appropriate to the scope and level of services the policy shall require the ~~provision to individuals and the legally authorized representative of the~~ following information~~, as appropriate to the scope and level of services~~:

1. The mission of the provider or service;

2. ~~Confidentiality~~ Service confidentiality practices and protections for individuals receiving services;

3. Human rights policies and protections and instructions on how to report violations;

4. ~~Participation~~ Opportunities for participation in ~~treatment~~ services and discharge planning;

5. Fire safety and emergency preparedness procedures;

6. The provider's grievance procedure;

7. Service guidelines including criteria for discharge or transfer from services;

8. Physical plant or building lay-out;

9. Hours and days of operation; ~~and~~

10. Availability of after-hours service; and

11. Any charges or fees due from the individual.

C. In addition, individuals receiving treatment services in a correctional ~~facilities will~~ facility shall receive an orientation to the facility's security restrictions.

D. The provider shall document that ~~orientation has been provided to individuals and the legal guardian/authorized representative~~ the individual and authorized representative, if applicable, received an orientation to services.

12VAC35-105-691. Transition of individuals among service locations.

A. The provider shall have written procedures that define the process for transitioning an individual between or among

services or locations operated by the provider. At a minimum the policy shall address:

1. The process by which the provider will assure continuity of services during and following transition.

2. The participation of the individual and his family or authorized representative, as applicable, in the decision to move and in the planning for transfer;

3. The process and timeframe for transferring the individual's record and ISP to the destination location;

4. The process and timeframe for transmitting the transfer summary to the destination location; and

5. The process and timeframe for transmitting, where applicable, discharge and admission summaries to the destination location.

B. The transfer summary shall include at a minimum the following:

1. Description of each service provided at the initial location;

2. Description of each service to be provided at the destination location;

3. Reason for the individual's transfer;

4. Documentation of involvement by the individual and his family or authorized representative, as applicable, in the decision to and planning for the transfer;

5. Current psychiatric and medical conditions or issues of the individual and the identity of the individual's health care providers;

6. Updated progress of the individual in meeting goals and objectives in his ISP;

7. Emergency medical information;

8. Dosages of all currently prescribed medications and over-the-counter medications used by the individual;

9. Transfer date; and

10. Signature of employee or contractor responsible for preparing the transfer summary.

C. The transfer summary may be documented in the individual's progress notes or in information easily accessible within an electronic record.

12VAC35-105-693. Discharge.

A. The provider shall have policies and procedures regarding the discharge or termination of individuals from the service. These policies and procedures shall include medical and clinical criteria for discharge.

B. Discharge instructions shall be provided in writing to the individual and his authorized representative, as applicable. Discharge instructions shall include at a minimum medications and dosages; names, phone numbers, and addresses of any providers to whom the individual is referred; current medical issues or conditions; and the identity of health care providers. This applies to residential and inpatient services only.

C. The provider shall make appropriate arrangements or referrals to all service providers identified in the discharge plan prior to the individual's scheduled discharge date.

D. The content of the discharge plan and the determination to discharge the individual shall be consistent with the ISP and the criteria for discharge.

E. The provider shall document in the individual's service record that the individual, his authorized representative, and his family members, as appropriate, have been involved in the discharge planning process.

F. A written discharge summary shall be completed within 30 days of discharge and shall include at a minimum the following:

1. Reason for the individual's admission to and discharge from the service;

2. Description of the individual's or authorized representative's participation in discharge planning;

3. The individual's current level of functioning or functioning limitations, if applicable;

4. Recommended procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence;

5. The status, location, and arrangements that have been made for future services;

6. Progress made by the individual in achieving goals and objectives identified in the ISP and summary of critical events during service provision;

7. Discharge date;

8. Discharge medications, if applicable;

9. Date the discharge summary was actually written or documented; and

10. Signature of the person who prepared the summary.

Article 3
Crisis Intervention and ~~Clinical~~ Emergencies

12VAC35-105-700. Written policies and procedures for ~~a~~ crisis or ~~clinical~~ emergency interventions; required elements.

A. The provider shall develop and implement written policies and procedures for prompt intervention in the event of a crisis or ~~clinical~~ a behavioral, medical, or psychiatric emergency that ~~occurs~~ may occur during screening and

referral ~~or during~~, at admission ~~and~~, or during the period of service provision. ~~A clinical emergency refers to either a medical or psychiatric emergency.~~

B. The policies and procedures shall include:

1. A definition of what constitutes a crisis ~~and clinical~~ or behavioral, medical, or psychiatric emergency;

2. Procedures for ~~stabilization and immediate access to~~ immediately accessing appropriate internal and external resources ~~including a provision for~~. This shall include a provision for obtaining physician and mental health clinical services if the provider's or service's on-call or back-up physician ~~back up~~ or mental health clinical services are not available at the time of the emergency;

3. Employee or contractor responsibilities; and

4. Location of emergency medical information for ~~individuals~~ each individual receiving services, including any advance psychiatric or medical directive or crisis response plan developed by the individual, which shall be readily accessible to employees or contractors on duty in an emergency or crisis.

12VAC35-105-710. Documenting crisis intervention and ~~clinical~~ emergency services.

A. The provider shall develop a method for documenting the provision of crisis intervention and ~~clinical~~ emergency services. Documentation shall include the following:

1. Date and time;

2. ~~Nature~~ Description of the nature of or circumstances surrounding the crisis or emergency;

3. Name of individual;

4. ~~Precipitating~~ Description of precipitating factors;

5. ~~Interventions/treatment~~ Interventions or treatment provided;

6. ~~Employees~~ Names of employees or contractors ~~involved~~ responding to or consulted during the crisis or emergency; and

7. Outcome.

B. If a crisis or ~~clinical~~ emergency involves an individual who is admitted into service, documentation of the crisis intervention ~~documentation~~ or provision of emergency services shall become part of his record.

Article 4
Medical Management

12VAC35-105-720. Health care policy.

A. The provider shall develop and implement a ~~written~~ policy, appropriate to the scope and level of service that addresses provision of adequate and appropriate medical care. This policy shall describe how:

1. Medical care needs will be assessed including circumstances that will prompt the decision to obtain a medical assessment.

2. Individualized services plans will address any medical care needs appropriate to the scope and level of service.

3. Identified medical care needs will be addressed.

4. Substance abuse will be assessed.

5. The provider ~~manages~~ will manage medical care needs or ~~responds~~ respond to abnormal findings.

~~5.~~ 6. The provider ~~communicates~~ will communicate medical assessments and diagnostic laboratory results to ~~individuals~~ the individual and authorized ~~representatives~~ representative, as appropriate.

~~6.~~ 7. The provider ~~keeps~~ will keep accessible to staff and contractors on duty the names, addresses, and phone numbers of the individual's medical and dental providers.

~~7.~~ 8. The provider ~~ensures~~ will ensure a means for facilitating and arranging, as appropriate, transportation to medical and dental appointments and medical tests, when services cannot be provided on site.

B. The provider shall establish and implement policies to identify any individuals who are at risk for falls and develop and implement a fall prevention and management plan and program for each at risk individual.

C. Providers of residential or inpatient services shall either provide or arrange for the provision of appropriate medical care. ~~A provider~~ Providers of other services shall define instances when ~~it~~ they shall provide or arrange for appropriate medical and dental care and instances when ~~it~~ they shall refer the individual to appropriate medical care.

D. The provider shall develop, document, and implement infection control measures including the use of universal precautions.

E. The provider shall report outbreaks of infectious diseases to the Department of Health pursuant to § 32.1-37 of the Code of Virginia.

12VAC35-105-730. ~~Medical information.~~ (Repealed.)

~~A. The provider shall develop and implement a medical evaluation or document its ability to obtain a medical evaluation that consists of, at a minimum, a health history and emergency medical information.~~

~~B. A health history shall include:~~

~~1. Allergies;~~

~~2. Recent physical complaints and medical conditions;~~

~~3. Chronic conditions;~~

~~4. Communicable diseases;~~

~~5. Handicaps or restriction on physical activities, if any;~~

~~6. Past serious illnesses, serious injuries and hospitalizations;~~

~~7. Serious illnesses and chronic conditions of the individual's parents, siblings and significant others in the same household;~~

~~8. Current and past drug usage including alcohol, prescription and nonprescription medications, and illicit drugs; and~~

~~9. Sexual health and reproductive history.~~

12VAC35-105-740. Physical examination.

A. The provider shall develop in consultation with a qualified practitioner and implement a policy on the provision of physical examinations ~~in consultation with a qualified practitioner~~. Providers of residential services shall administer or obtain results of physical exams within 30 days of an individual's admission. Providers of inpatient services shall administer physical exams within 24 hours of an individual's admission.

B. A physical examination shall include, at a minimum:

1. General physical condition (history and physical);

2. Evaluation for communicable diseases;

3. Recommendations for further diagnostic tests and treatment, if appropriate;

4. Other examinations that may be indicated~~, if appropriate~~; and

5. The date of examination and signature of a qualified practitioner.

C. Locations designated for physical examinations shall ensure individual privacy.

D. The provider shall make arrangements for the timely receipt of any further diagnostic tests, treatments, or examinations that may be indicated by the physical examination.

E. The provider shall document results of the physical examination and of any follow-up diagnostic tests, treatments, or examinations in the individual's records.

12VAC35-105-750. Emergency medical information.

A. The provider shall maintain the following emergency medical information for each individual:

1. If available, the name, address, and telephone number of:

a. The individual's physician; and

b. A relative, ~~legally~~ authorized representative, or other person to be notified;

2. Medical insurance company name and policy or Medicaid, Medicare or CHAMPUS number, if any; ~~and~~

3. Currently prescribed medications and over-the-counter medications used by the individual;

4. Medication and food allergies;

5. History of substance abuse;

6. Significant medical problems or conditions;

7. Significant ambulatory or sensory problems;

8. Significant communication problems; and

~~8.~~ 9. Advance directive, if one exists.

B. Current emergency medical information shall be readily available to employees or contractors wherever program services are provided.

Article 5
Medication Management Services

12VAC35-105-770. Medication management.

A. The provider shall develop and implement written policies addressing:

1. The safe administration, handling, storage, and disposal of medications;

2. The use of medication orders;

3. The handling of packaged medications brought by individuals from home or other residences;

4. Employees or contractors who are authorized to administer medication and training required for administration of medication;

5. The use of professional samples; and

6. The window within which medications can be given in relation to the ordered time of administration.

B. Medications shall be administered only by persons who are authorized by state law.

C. Medications shall be administered only to the individuals for whom the medications are prescribed and shall be administered as prescribed.

D. The provider shall maintain a daily log of all medicines received and refused by each individual. This log shall identify the employee or contractor who administered the medication, the name of the medication and dosage administered or refused, and the time the medication was administered or refused.

E. If the provider administers medications or supervises self-administration of medication in a service, a current

medication order for all medications the individual receives shall be maintained on site.

F. The provider shall promptly dispose of discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels according to the applicable regulations of the Virginia Board of Pharmacy.

12VAC35-105-790. Medication administration and storage or pharmacy operation.

A. ~~The~~ A provider responsible for medication administration and medication storage or pharmacy operations shall comply with:

1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);

2. The Virginia Board of Pharmacy regulations (18VAC110-20);

3. The Virginia Board of Nursing regulations and Medication Administration Curriculum (18VAC90-20-370 through 18VAC90-20-390); and

4. Applicable federal laws and regulations relating to controlled substances.

B. ~~The~~ A provider responsible for medication administration and storage or pharmacy operation shall provide in-service training to employees and consultation to individuals ~~or legally~~ and authorized representatives on issues of basic pharmacology including medication side effects.

Article 6
Behavior ~~Management~~ Interventions

12VAC35-105-800. Policies and procedures on behavior ~~management techniques~~ interventions and supports.

A. The provider shall develop and implement ~~written~~ policies and procedures that describe the use of behavior ~~management techniques~~ interventions, including, but not limited to, seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;

2. Emphasize positive approaches to behavior ~~management~~ interventions;

3. List and define behavior ~~management techniques~~ interventions in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;

4. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;

5. Specify the mechanism for monitoring the use of behavior ~~management techniques~~ interventions; and

6. Specify the methods for documenting the use of behavior ~~management techniques~~ interventions.

B. ~~The behavior management policies and procedures shall be developed, implemented, and monitored by employees or contractors trained in behavior management programming~~ Employees and contractors trained in behavior support interventions shall implement and monitor all behavior interventions.

C. Policies and procedures related to behavior ~~management shall be available to individuals, their families, guardians and advocates except that it does not apply to services provided in correctional facilities~~ interventions shall be available to individuals, their families, authorized representatives, and advocates. Notification of policies does not need to occur in correctional facilities.

D. Individuals receiving services shall not discipline, restrain, seclude or implement behavior ~~management techniques~~ interventions on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of behavior ~~management techniques~~ interventions shall be recorded in the ~~clinical~~ individual's services record and reported to the employee or contractor responsible for the overall coordination of services.

12VAC35-105-810. Behavioral treatment plan.

A behavioral treatment plan may be developed as part of the individualized services plan in response to behavioral needs identified through the assessment process. A behavioral treatment plan may include restrictions only if the plan has been developed according to procedures outlined in the human rights regulations. ~~Behavioral~~ A behavioral treatment plan shall be developed, implemented, and monitored by employees or contractors trained in behavioral treatment.

12VAC35-105-820. Prohibited actions.

The following actions shall be prohibited:

1. Prohibition of contacts and visits with attorney, probation officer, placing agency representative, minister or chaplain;

2. Any action that is humiliating, degrading, or abusive;

3. Corporal punishment;

4. Subjection to unsanitary living conditions;

5. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record;

6. Deprivation of appropriate services and treatment;

7. Deprivation of health care;

8. Administration of laxatives, enemas, or emetics except as ordered by a physician or other professional acting within the scope of his license for a legitimate medical purpose and documented in the individual's record;

9. Applications of aversive stimuli except as permitted pursuant to other applicable state regulations;

10. Limitation on contacts with regulators, advocates or staff attorneys employed by the department or the ~~Department for the Rights of Virginians with Disabilities~~ Virginia Office for Protection and Advocacy.

11. Deprivation of drinking water or food necessary to meet an individual's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record;

12. Prohibition on contacts ~~and~~ or visits with family or ~~legal guardian~~ an authorized representative except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

13. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction; and

14. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record.

12VAC35-105-830. Seclusion, restraint, and time out.

A. The use of seclusion, restraint, and time out shall comply with applicable federal and state laws and regulations and be consistent with the provider's policies and procedures.

B. Devices used for mechanical restraint shall be designed specifically for behavior management of human beings in clinical or therapeutic programs.

C. Application of time out, seclusion, and restraint shall be documented in the individual's record and, at a minimum, include the following:

1. Physician's order;

2. Date and time;

3. Employees or contractors involved;

4. Circumstances and reasons for use~~,~~ including but not limited to other behavior management techniques attempted;

5. Duration;

6. Type of technique used; and

7. Outcomes, including documentation of debriefing of the individual and staff involved following the incident.

12VAC35-105-840. Requirements for seclusion room.

A. The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons.

B. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

C. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures or other devices which may cause injury to the ~~occupant~~ individual.

D. Windows in the seclusion room shall be so constructed as to minimize breakage and otherwise prevent the ~~occupant~~ individual from harming himself.

E. Light fixtures and other electrical receptacles in the seclusion room shall be recessed or so constructed as to prevent the ~~occupant~~ individual from harming himself. Light controls shall be located outside the seclusion room.

F. Doors to the seclusion room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for someone outside the door to see into all corners of the room.

G. The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

H. The seclusion room shall maintain temperatures appropriate for the season.

I. All space in the seclusion room shall be visible through the locked door, either directly or by mirrors.

~~Article 7~~
~~Continuity of Service and Discharge~~

12VAC35-105-850. ~~Transition of individuals among services.~~ (Repealed.)

~~A. The provider shall have written procedures to define the process for the transition of an individual among services of the provider. At a minimum, the policy will address:~~

~~1. Continuity of service;~~

~~2. Participation of the individual and his family;~~

~~3. Transfer of the individual's record;~~

~~4. Transfer summary; and~~

~~5. Where applicable, discharge and admission summaries.~~

~~B. The transfer summary will include at a minimum:~~

~~1. The originating service;~~

~~2. The destination service;~~

~~3. Reason for transfer;~~

~~4. Current psychiatric and medical condition of the individual;~~

~~5. Updated progress on meeting the goals and objectives of the ISP;~~

~~6. Medications and dosages in use;~~

~~7. Transfer date; and~~

~~8. Signature of employee or contractor responsible for preparing the transfer summary.~~

12VAC35-105-860. ~~Discharge.~~ (Repealed.)

~~A. The provider shall have written policies and procedures regarding the discharge of individuals from the service and termination of services. These policies and procedures shall include medical or clinical criteria for discharge.~~

~~B. Discharge instructions shall be provided, in writing, to the individual or his legally authorized representative or both. Discharge instructions shall include, at a minimum, medications and dosages, phone numbers and addresses of any providers to whom the individual is referred, current medical issues, conditions, and the identity of health care providers. This regulation applies to residential and inpatient services.~~

~~C. The provider shall make appropriate arrangements or referrals to all services identified by the discharge plan prior to the individual's scheduled discharge date.~~

~~D. Discharge planning and discharge shall be consistent with the individualized services plan and the criteria for discharge.~~

~~E. The individual's, the individual's legally authorized representative and the individual's family's involvement in discharge planning shall be documented in the individual's service record.~~

~~F. A written discharge summary shall be completed within 30 days of discharge and shall include, at a minimum, the:~~

~~1. Reason for admission and discharge;~~

~~2. Individual's participation in discharge planning;~~

~~3. Individual's level of functioning or functional limitations, if applicable;~~

~~4. Recommendations on procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence and the status, location and arrangements for future services that have been made;~~

~~5. Progress made achieving the goals and objectives identified in the individualized services plan and summary of critical events during service provision;~~

~~6. Discharge date;~~

~~7. Discharge medications, if applicable;~~

~~8. Date the discharge summary was actually written/documented; and~~

~~9. Signature of person who prepared summary.~~

Part V
Records Management

12VAC35-105-870. Written and electronic records management policy.

A. The provider shall develop and implement a written and electronic records management policy that ~~shall describe~~ describes confidentiality, accessibility, security, and retention of records pertaining to individuals, including:

1. Access and limitation of access, duplication ~~and~~, or dissemination of individual information ~~only~~ to persons ~~legally~~ who are authorized to access such information according to federal and state laws;

2. Storage, processing and handling of active and closed records;

3. Storage, processing and handling of electronic records;

4. Security measures ~~to~~ that protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites; ~~physical and data security controls shall exist for electronic records;~~

5. Strategies for service continuity and record recovery from interruptions that result from disasters or emergencies including contingency plans, electronic or manual back-up systems, and data retrieval systems;

6. Designation of the person responsible for records management; and

~~6.~~ 7. Disposition of records in the event that the service ceases operation. If the disposition of records ~~would involve~~ involves a transfer to another provider, the provider shall have a written agreement with that provider.

B. The records management policy shall be consistent with applicable state and federal laws and regulations including:

1. Section 32.1-127.1:03 of the Code of Virginia;

2. 42 USC § 290dd;

3. 42 CFR Part 2; and

4. The Health Insurance Portability and Accountability Act (Public Law 104-191, ~~42~~ 45 USC § 300gg et seq.) and implementing regulations ~~(42 CFR Part 146)~~ (45 CFR Parts 160, 162, and 164).

12VAC35-105-880. Documentation policy.

A. The provider shall define, by policy, all records it maintains that address an individual's care and treatment and what each record contains.

B. The provider shall define, by policy, and implement a system of documentation ~~which~~ that supports appropriate service planning, coordination, and accountability. At a minimum this policy shall outline:

1. The location of the individual's record;

2. Methods of access by employees or contractors to the individual's record; and

3. Methods of updating the individual's record by employees or contractors including the frequency and format of updates.

C. Entries in the individual's record shall be current, dated, and authenticated by the ~~person~~ persons making the ~~entry~~ entries. Errors shall be corrected by striking through the incorrect information and initialing the correction. If records are electronic, the provider shall develop and implement a written policy ~~to identify~~ on the identification of corrections ~~of~~ to the record.

12VAC35-105-890. Individual's service record.

A. There shall be a single, separate primary record for each individual or family admitted for service. A separate record shall be maintained for each family member who is receiving individual treatment.

B. All individuals admitted to the service shall have identifying information ~~on the face sheet~~ readily accessible in the individual's service record. Identifying information ~~on a standardized face sheet or sheets~~ shall include the following:

1. Identification number unique for the individual;

2. Name of individual;

3. Current residence, if known;

4. Social security number;

5. Gender;

6. Marital status;

7. Date of birth;

8. Name of ~~legal guardian or~~ authorized representative, if applicable;

9. Name, address, and telephone number for emergency contact;

10. Adjudicated legal incompetency or legal incapacity, if applicable; and

11. Date of admission to service.

C. In addition ~~to the face sheet,~~ an individual's service record shall contain, at a minimum:

1. Screening documentation;

2. Assessments;

3. Medical evaluation, as applicable to the service;

4. Individualized services plans and reviews;

5. Progress notes; and

6. A discharge summary, if applicable.

12VAC35-105-900. Record storage and security.

A. When not in use, active and closed records shall be stored in a locked cabinet or room.

B. Physical and data security controls shall exist ~~for~~ to protect electronic records.

12VAC35-105-910. Retention of individual's service records.

A. ~~An~~ Unless otherwise specified by state or federal requirements, the provider shall retain an individual's service ~~records shall be kept~~ record for a minimum of three years after his discharge date or date of last contact ~~unless otherwise specified by state or federal requirements~~.

B. ~~Permanent information kept on each individual shall include~~ The provider shall retain the following individual information permanently:

1. Individual's name;

2. Social security number;

3. Date of individual's birth;

4. Dates of admission and discharge; and

5. Name and address of ~~legal guardian~~ authorized representative, if any.

Part VI
Additional Requirements for Selected Services

Article 1
Opioid Treatment Services

12VAC35-105-925. Standards for the evaluation of the need for new licenses for providers of services to persons with opioid addiction.

A. Applicants requesting an initial license to provide a ~~new~~ service for the treatment of opioid addiction through the use of methadone or any other opioid treatment medication or controlled substance shall supply information to ~~demonstrate~~ the department that demonstrates the need for, and appropriateness of, the proposed service in accordance with this section.

B. Applicants shall demonstrate that the geographic and demographic parameters of the service area are reasonable and the proposed service is expected to serve a sufficient number of individuals to justify the service as documented in subsection D of this section. For purposes of demonstrating need, applicants shall define a service area that is located entirely in Virginia and does not extend more than 100 miles from the proposed location of the service. Applicants also shall identify the number of individuals they seek to be licensed to serve.

C. Applicants shall submit admission policies that give priority to individuals residing in the service area for admission and placement on waiting lists.

D. Applicants shall demonstrate that there are persons residing in their service areas who have an opioid addiction who would benefit from the proposed service. The following information may be used by the applicant to document that individuals in the service area are known or reasonably expected to need the proposed service:

1. Numbers of persons on waiting lists for admission to any existing opioid addiction or other public substance abuse treatment program in the service area for the most recent available 12-month period;

2. Numbers of opioid use disorder cases (e.g., overdoses) originating from the proposed service area that have been treated in hospital emergency rooms for the most recent available 12-month period;

3. Projections of the number of persons in the service area who are likely to obtain services for opioid addiction, based on drug-use forecasting data;

4. Data reported on suicidal and accidental deaths related to opioid use in the proposed service area for the most recent available 12-month period;

5. Data regarding arrests from local law-enforcement officials in the proposed service area related to illicit opioid activities;

6. Data on communicable diseases for the proposed service area related to injection drug abuse (e.g. HIV, AIDS, TB, and Hepatitis B and C);

7. Data on the availability of any evidence-based alternative service or services that have been proven effective in the treatment of opioid addiction and that are accessible to persons within the proposed service area, including services provided by physicians' offices; and

8. Letters of support from citizens, governmental officials, or health care providers, that indicate that there are conditions or problems associated with substance abuse in the community that demonstrate a need for opioid treatment services in the service area.

E. The department shall determine whether a need exists for the proposed service based on the documentation provided in accordance with subsection D of this section and the consideration of the following standards:

1. Whether there are a sufficient number of persons in the proposed service area who are likely to need the specific opioid treatment service that the applicant intends to provide;

2. Whether the data indicate that evidence-based service capacity in the service area is not responsive to or sufficient enough to meet the needs of individuals with opioid addiction; and

3. Whether there is documentation of support to confirm the need for the proposed service in the proposed service area.

F. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia and, with the exception of services that are proposed to be located in Planning District 8, shall not be located within one-half mile of a public or private licensed day care center or a public or private K-12 school.

G. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

H. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;

2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;

3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;

4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;

5. The proposed site can accommodate individuals during periods of inclement weather;

6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and

7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

I. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program director shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification with relevant training, experience, or both, in the treatment of persons with opioid addiction;

2. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year, a course of study in opiate addiction that is approved by the department;

3. A minimum of one pharmacist;

4. Nurses;

5. Counselors shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification; and

6. Personnel to provide support services.

J. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;

2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;

3. Proposed hours and days of operation;

4. Plans for on-site security; and

5. A diversion control plan for dispensed medications, including policies for use of drug screens.

K. Applicants shall, in addition to the requirements of 12VAC35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12VAC35-105-60 B and included in the individualized services plan:

1. Psychological services;

2. Social services;

3. Vocational services;

4. Educational services; and

5. Employment services.

L. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss its plans for operating in the area and to develop joint agreements, as appropriate.

M. Applicants shall provide policies and procedures that require every six months each individual served to be assessed by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

N. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue opioid treatment services.

O. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

P. The department, including the Office of Licensing, Office of Human Rights, or Office of Substance Abuse Services, shall conduct announced and unannounced reviews and complaint investigations~~,~~ in collaboration with the ~~state methadone authority,~~ Virginia Board of Pharmacy~~,~~ and DEA to determine compliance with the regulations.

12VAC35-105-930. Registration, certification or accreditation.

A. The opioid treatment service shall maintain current registration or certification with:

1. The ~~Federal~~ federal Drug Enforcement Administration;

2. The federal Department of Health and Human Services; and

3. The Virginia Board of Pharmacy.

B. ~~If required by federal regulations, a~~ A provider of opioid treatment services shall be required to maintain accreditation with an entity approved under federal regulations.

12VAC35-105-940. Criteria for involuntary termination from treatment.

A. The provider shall establish criteria for involuntary termination from treatment that describe the rights of the individual receiving services and the responsibilities and rights of the provider.

B. The provider shall establish a grievance procedure as part of the rights of the individual.

C. On admission, the individual shall be given a copy of the criteria and shall sign a statement acknowledging receipt of same. The signed acknowledgement shall be maintained in the individual's record.

D. Upon admission and annually all individuals shall sign an authorization for disclosure of information to allow programs

access to the Virginia Prescription Monitoring System. Failure to comply shall be grounds for nonadmission to the program.

12VAC35-105-950. Service operation schedule.

A. The service's days of operation shall meet the needs of the ~~population~~ individuals served. If the service dispenses or administers a medication requiring daily dosing, the service shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the state methadone authority shall be required for additional closed days.

B. The service may close on Sundays if the following criteria are met:

1. The provider develops and implements policies and procedures that address recently inducted individuals receiving services, individuals not currently on a stable dose of medication, patients that present noncompliance treatment behaviors, and individuals who previously picked up take-homes on Sundays, security of take-home doses, and health and safety of individuals receiving services.

2. The provider receives prior approval from the state methadone authority for Sunday closings.

3. Once approved, the provider shall notify individuals receiving services in writing at least 30 days in advance of their intent to close on Sundays. The notice shall address the risks to the individuals and the security of take-home medications. All individuals shall receive an orientation addressing take-home policies and procedures, and this orientation shall be documented in the patient record prior to receiving take-home medications.

4. The provider shall establish procedures for emergency access to dosing information 24 hours a day, seven days a week. This information may be provided via an answering service, pager, or other electronic measures. Information needed includes the individual's last dosing time and date, and dose.

C. Medication dispensing hours shall include at least two hours each day of operation outside normal working hours, i.e., before 9 a.m. and after 5 p.m. The state methadone authority may approve an alternative schedule if that schedule meets the needs of the population served.

12VAC35-105-960. Physical examinations.

A. The individual shall have a complete physical evaluation prior to admission to the service unless the individual is transferring from another licensed opioid agonist service. A full physical examination, including the results of serology and other tests, shall be completed within 14 days of admission.

B. Physical exams of each individual shall be completed annually or more frequently if there is a change in the individual's physical or mental condition.

C. The provider shall maintain the report of the individual's physical examination in the individual's service record.

D. On admission, all individuals shall be tested for AIDS/HIV. The individual may sign a notice of refusal without prejudice.

E. The provider shall coordinate treatment services for individuals who are prescribed benzodiapines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.

12VAC35-105-970. Counseling sessions.

The provider shall conduct face-to-face counseling sessions (either individual or group) at least every two weeks for the first year of an individual's treatment and every month in the second year of the individual's treatment. After two years, the number of face-to-face counseling sessions that an individual receives shall be based on the individual's progress in treatment. ~~Absences~~ The failure of an individual to participate in counseling sessions shall be addressed as part of the overall treatment process.

12VAC35-105-980. Drug screens.

A. The provider shall perform at least eight random drug screens during a 12-month period unless the conditions in subdivision B of this subsection apply;

B. Whenever an individual's drug screen indicates continued illicit drug use or when clinically and environmentally indicated, random drug screens shall be performed weekly.

C. Drug screens shall be analyzed for opiates, methadone (if ordered), benzodiazepines and cocaine. In addition, drug screens for other drugs ~~with~~ that have the potential for addiction shall be performed when clinically and environmentally indicated.

D. The provider shall develop and implement a policy on how the results of drug screens shall be used to direct treatment.

12VAC35-105-990. Take-home medication.

A. Prior to dispensing regularly scheduled take-home medication, the provider shall ensure the individual demonstrates a level of current lifestyle stability as evidenced by the following:

1. Regular clinic attendance, including dosing and participation in counseling or group sessions;

2. Absence of recent alcohol abuse and other illicit drug use;

3. Absence of significant behavior problems; ~~and~~

4. Absence of recent criminal activities, charges or convictions;

5. Stability of the individual's home environment and social relationships;

6. Length of time in treatment;

7. Ability to assure take-home medications are safely stored; and

8. Demonstrated rehabilitative benefits of take-home medications outweigh the risks of possible diversion.

B. The provider shall educate the individual on the safe transportation and storage of take-home medication.

12VAC35-105-1000. Preventing duplication of medication services.

To prevent duplication of opioid medication services to an individual, the provider shall ~~have~~ develop and implement a policy and ~~implement~~ procedures ~~to contact~~ for contacting every opioid treatment service within a 50-mile radius before admitting an individual.

12VAC35-105-1010. Guests.

A. ~~No medication shall be dispensed~~ The provider shall not dispense medication to any guest unless the guest has been receiving such medication services from another provider and documentation from ~~such~~ that provider has been received prior to dispensing medication.

B. Guests may receive medication for up to 28 days. To continue receiving medication after 28 days, the guest must be admitted to the service. Individuals receiving guest medications as part of a residential treatment service may exceed the 28-day maximum time limit.

12VAC35-105-1020. Detoxification prior to involuntary discharge.

~~Individuals~~ The provider shall give an individual who ~~are~~ is being involuntarily discharged ~~shall be given~~ an opportunity to detoxify from opioid agonist medication not less than 10 days or not more than 30 days prior to his discharge from the service, unless the state methadone authority has granted an exception.

12VAC35-105-1040. Emergency preparedness plan.

The provider's emergency preparedness plan shall include provision for the continuation of opioid treatment in the event of an emergency or natural disaster.

12VAC35-105-1050. Security of opioid agonist medication supplies.

A. At a minimum, the provider shall secure opioid agonist medication supplies ~~shall be secured as follows:~~ by restricting access to medication areas to medical or pharmacy personnel.

~~1. Admittance to the medication area shall be restricted to medical or pharmacy personnel;~~

~~2.~~ B. ~~Medication inventory shall be reconciled~~ The provider shall reconcile the medication inventory monthly~~; and~~.

~~3.~~ C. ~~Inventory~~ The provider shall keep inventory records, including the monthly reconciliation, ~~shall be kept~~ for three years.

~~B.~~ D. The provider shall maintain a current plan to control the diversion of medication to unprescribed or illegal uses.

Article 2
Managed Withdrawal Services

12VAC35-105-1055. Description of level of care provided.

In the service description the provider shall describe the level of services and the medical management provided.

~~Article 2~~
~~Social Detoxification Services~~

12VAC35-105-1060. Cooperative agreements with community agencies.

The provider shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for physician coverage if not provided on-site, and emergency medical care. The agreements shall clearly outline the responsibility of each party.

12VAC35-105-1080. Direct-care training for providers of detoxification services.

A. The provider shall document staff training in the areas of:

1. Management of withdrawal; and

2. First responder training~~; or~~.

~~3. First aid and CPR training.~~

B. ~~New employees or contractors shall be trained within 30 days of employment.~~ Untrained employees or contractors shall not be solely responsible for the care of individuals.

12VAC35-105-1090. Minimum number of employees or contractors on duty.

In detoxification service locations, at least two employees or contractors shall be on duty at all times. If the location is within or contiguous to another service location, at least one employee or contractor shall be on duty at the location with trained backup employees or contractors immediately available. In other managed withdrawal settings the number of staff on duty shall be appropriate for the services offered and individuals served.

12VAC35-105-1100. Documentation.

Employees or contractors on each shift shall document services provided and significant events in the individual's record ~~on each shift~~.

12VAC35-105-1110. Admission assessments.

During the admission process, providers of ~~detoxification~~ managed withdrawal services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;

2. Assess substances used and time of last use;

3. Determine time of last meal;

4. Administer a urine screen;

~~6.~~ 5. Analyze blood alcohol content or administer a breathalyzer; and

~~7.~~ 6. Record vital signs.

Article 3
Services in Department of Corrections Correctional Facilities

12VAC35-105-1140. Clinical and security coordination.

A. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security employees or contractors.

B. The provider shall demonstrate ongoing communication between clinical and security employees to ensure individual care.

C. The provider shall provide cross-training for the clinical and security employees or contractors that includes:

1. Mental health, mental retardation (intellectual disability), and substance abuse education;

2. Use of clinical and security restraints; and

3. Channels of communication.

D. Employees or contractors shall receive periodic in-service training, and have knowledge of and be able to demonstrate the appropriate use of clinical and security restraint.

E. Security and behavioral assessments shall be completed at the time of admission to determine service eligibility and at least weekly for the safety of individuals, other persons, employees, and visitors.

F. Personal grooming and care services for individuals shall be a cooperative effort between the clinical and security employees or contractors.

G. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

H. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

I. An assessment of the individual's clinical condition and needs shall be made when disciplinary action or restrictions are required for infractions of security measures.

J. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

12VAC35-105-1150. Other requirements for correctional facilities.

A. Group bathroom facilities shall be partitioned between toilets and urinals to provide privacy.

B. If uniform clothing is required, the clothing shall be properly fitted, climatically suitable, durable, and presentable.

C. Financial compensation for work performed shall be determined by the Department of Corrections. Personal housecleaning tasks may be assigned without compensation to the individual.

D. The use of audio equipment, such as televisions, radios, and record players, shall not interfere with therapeutic activities.

E. Aftercare planning for individuals nearing the end of incarceration shall include a provision for continuing medication and follow-up services with area community services to facilitate successful reintegration into the community including specific appointment provided to the inmate no later than the day of release.

Article 4
Sponsored Residential Homes Services

12VAC35-105-1160. Sponsored residential home information.

Providers of sponsored residential home services shall maintain the following information:

1. Names and ages of residential sponsors;

2. Date of sponsored residential home agreement;

3. The maximum number of individuals that can be placed in the home at a given time;

4. Names and ages of all other individuals who are not receiving services~~,~~ but are residing in a sponsored residential home;

5. Address and telephone number of the sponsored residential home; and

6. ~~All~~ Names of all staff employed in the home, including on-call and substitute staff.

12VAC35-105-1170. Sponsored residential home agreements.

A. The provider shall develop and maintain a written agreement with residential home sponsors. Sponsors are

~~individuals~~ persons who provide the home where the service is located and are directly responsible for the provision of services. The agreement shall include the:

1. ~~Be available for inspection by the licensing specialist; and~~ Provider's responsibilities;

2. ~~Include a provision for granting the right of entry to state licensing specialists or human rights advocates to investigate complaints.~~ Sponsor's responsibilities;

3. Scope of services;

4. Supervision;

5. Compensation;

6. Training; and

7. Reporting requirements and procedures.

B. The agreement shall be available for inspection by the licensing specialist and shall include a provision for granting the right of entry to state licensing specialists or human rights advocates to conduct inspections.

12VAC35-105-1180. Sponsor qualification and approval process.

A. The provider shall evaluate and certify each sponsored residential ~~homes~~ home other than his own through face-to-face interviews, home ~~visits~~ inspections, and other information documenting compliance with this regulation. The provider shall submit the certification form to the department before individuals are placed in the home and ensure that the following requirements are met annually.

B. The provider shall certify and document that ~~all~~ each sponsored residential ~~homes meet~~ home meets the criteria for physical environment and residential services designated in these regulations.

C. The provider shall document the ability of the sponsored ~~staff's ability~~ residential home staff to meet the needs of the individuals placed in the home by assessing and documenting:

1. The ~~sponsored staff's~~ ability of the staff to communicate and understand individuals receiving services;

2. The ~~sponsored staff's~~ ability of the staff to provide the care, treatment, training, or habilitation for ~~individual~~ individuals receiving services in the home;

3. The abilities of all members of the sponsored household to accept individuals with disabilities and their disability-related characteristics, especially the ability of children in the household to adjust to nonfamily members living with them; ~~and~~

4. The financial capacity of the sponsor to meet the sponsor's own expenses for up to 90 days, independent of payments received for residents living in the home~~.~~; and

5. The education, qualifications, and experience of the staff with the individuals served including Virginia Department of Motor Vehicles driving record, tuberculosis screening, first-aid and CPR certification, and completion of medication administration and behavior management interventions training.

D. The provider shall obtain three job-related references, past licensing history, criminal background checks, and a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services for the sponsor and all ~~adults in the home who are~~ staff. ~~The provider must develop policies for obtaining references, background and registry checks for all adults in the home who are not staff and not the individuals being served.~~

E. The provider shall develop and implement written policies for obtaining references, criminal background checks, and registry checks for all adults in the home who are neither staff nor individuals being served. The policy shall indicate what action the provider will take if the results indicate that a member of the sponsor family has been convicted of a barrier crime or fails to meet the requirements of this regulation should an ineligible result be received.

F. ~~Sponsored~~ The sponsored residential home ~~members~~ shall submit to the provider the results of a physical and mental health examination of family members when requested by the provider based on indications of a physical or mental health ~~problem~~ issue.

~~F.~~ G. Sponsored residential homes shall not also operate as group homes or Department of Social Services approved homes or foster homes.

H. The provider shall submit the name, address, and certification of the sponsored residential home to the department prior to adding the home. The provider shall submit the name and address of the sponsored residential home to the department prior to closing the home. The provider shall submit a service modification when approving homes more than 100 miles from the previously approved homes.

12VAC35-105-1190. Sponsored residential home service policies.

A. The provider shall develop and implement policies to provide orientation and supportive services to ~~sponsored~~ the sponsored residential home staff specific to ~~individual~~ the needs of the individuals receiving services.

B. The provider shall develop and implement a training plan for the ~~sponsored~~ sponsor staff consistent with ~~resident~~ the needs of the individuals receiving services.

C. The provider shall specify staffing arrangements in all sponsored residential homes, including on-call and substitute care arrangements.

D. The provider shall develop and implement a written policy on managing, monitoring, and supervising sponsored residential homes. This policy shall address changes in supervision arrangements as the number of homes increase.

E. The provider shall conduct ~~at least semi-annual unannounced visits to~~ inspections of each sponsored residential ~~homes~~ home other than his own. Inspections shall be performed at least on a quarterly basis during the year with at least two being unannounced inspections.

F. On an on-going basis and at least annually, the provider shall review and document compliance ~~of~~ by each sponsored residential ~~homes~~ home and ~~sponsors~~ sponsor with regulations related to sponsored residential homes.

G. The provider shall develop written policies ~~regarding termination of~~ for terminating a sponsored residential home.

H. The provider shall document that all residents or their authorized representatives are provided the opportunity to choose a new placement when the current placement ends. Prior to moving an individual to another placement the provider shall conduct and document a meeting to include the individual and their authorized representative, if applicable, case manager, the current sponsor, and a receiving placement staff, if possible.

12VAC35-105-1200. Supervision.

A. The provider shall have a supervisor for every 20 sponsored residential homes where individuals are residing.

B. A responsible adult shall be available to provide supervision to the individual as specified in the individualized service plan.

~~B.~~ C. Any member of the sponsor family who transports individuals receiving services must have a valid driver's license and automobile liability insurance. The vehicle used to transport individuals receiving services shall have a valid registration and inspection sticker.

~~C.~~ D. The sponsor shall inform the provider in advance of any anticipated additions or changes in the sponsored residential home or as soon as possible after an unexpected change occurs.

E. In addition to the current reporting requirements the sponsor shall report all hospitalizations of the individuals being served to the provider and the individual's case manager within 24 hours.

12VAC35-105-1210. Sponsored residential home service records.

Providers of sponsored residential home services shall maintain records on each sponsored residential home, which shall include:

1. Documentation of three references for the owner of the sponsor home;

2. Criminal background checks and results of the search of the registry of founded complaints of child abuse and neglect ~~on~~ for all ~~adults who are staff~~ adult employees in the home;

3. Orientation and training provided by the provider to the sponsor and employees;

4. ~~A~~ The log of provider ~~visits to each~~ inspections of the sponsored residential home including the date, the ~~staff person visiting~~ employee conducting the inspection, the purpose of the ~~visit~~ inspection, and a description of any significant events; and

5. The ~~sponsor will maintain a~~ daily log maintained by the sponsor of significant events related to individuals receiving services.

12VAC35-105-1220. Regulations pertaining to ~~employees~~ staff.

Providers ~~will~~ shall certify and document compliance of sponsors with regulations pertaining to ~~employees~~ staff.

12VAC35-105-1230. Maximum number of beds or occupants in sponsored residential home.

The maximum number of individuals served in a sponsored residential home ~~beds~~ is two. The maximum number of occupants in a sponsored residential home is seven.

12VAC35-105-1235. Sponsored residential home services for children.

In addition, the following requirements shall be met for homes serving children:

1. The provider shall develop a service description based upon evidence-based practices or an accepted therapeutic model of mental health, mental retardation (intellectual disability), substance abuse, or brain injury care for children.

2. The provider shall use a treatment team model consisting of staff who provide intensive support and consultation to the sponsor parents.

3. Weekly team meetings and supervision shall be held with the sponsor parent or parents to review progress on each case, review the daily behavioral information collected, and adjust the child's individualized services plan.

4. The sponsor parent or parents shall keep a daily log of behavioral and other child specific information and be available for daily Monday through Friday contact from the provider.

5. The sponsor parent or parents shall receive 25 hours per year of in-service training pertaining to providing services for the child they serve in addition to the training otherwise required in these regulations. The sponsor parent or parents

shall also participate in ongoing training at least once a quarter.

6. The provider is not considered a child placing agency. Children are placed with the provider by licensed child placing agencies, local departments of social services, or parents.

7. The sponsor parent or parents shall be at least 25 years old.

8. The sponsor parent or parents shall be able to provide care and supervision during nonschool hours.

9. The provider shall have access through directly providing it or developing agreements for 24-hour emergency mental health care for children with serious emotional disturbances served.

Article 5
Case Management Services

12VAC35-105-1240. Service requirements for providers of case management services.

~~A. As part of the intake assessment, the provider of case management services shall identify individuals whose needs may be addressed through case management services.~~

~~B.~~ Providers of case management services shall document that the services below are performed consistent with the individual's assessment and ~~individualized services plan~~ ISP.

1. Enhancing community integration through increased opportunities for community access and involvement and creating opportunities to enhance community living skills to promote community adjustment including, to the maximum extent possible, the use of local community resources available to the general public;

2. Making collateral contacts with the individual's significant others with properly authorized releases to promote implementation of the individual's individualized services plan and his community adjustment;

3. Assessing needs and planning services to include developing a case management individualized services plan;

4. Linking the individual to those community supports that are most likely to promote the personal habilitative/rehabilitative and life goals of the individual as developed in the ~~individualized service plan (ISP)~~ ISP;

5. Assisting the individual directly to locate, develop, or obtain needed services, resources, and appropriate public benefits;

6. Assuring the coordination of services and service planning within a provider agency, with other providers and with other human service agencies and systems, such as local health and social services departments;

7. Monitoring service delivery through contacts with individuals receiving services, service providers and periodic site and home visits to assess the quality of care and satisfaction of the individual;

8. Providing follow up instruction, education and counseling to guide the individual and develop a supportive relationship that promotes the ~~individualized services plan~~ ISP;

9. Advocating for individuals in response to their changing needs, based on changes in the individualized services plan;

~~10. Developing a crisis plan for an individual that includes the individual's references regarding treatment in an emergency situation;~~

~~11.~~ 10. Planning for transitions in individual's lives; ~~and~~

~~12.~~ 11. Knowing and monitoring the individual's health status, any medical conditions, and his medications and potential side effects, and assisting the individual in accessing primary care and other medical services, as needed~~.~~; and

12. Understanding the capabilities of services to meet the individual's indentified needs and preferences and to serve the individual without placing the individual, other participants, or staff at risk of serious harm.

12VAC35-105-1250. Qualifications of case management employees or contractors.

A. Employees or contractors providing case management services shall have knowledge of:

1. Services and systems available in the community including primary health care, support services, eligibility criteria and intake processes and generic community resources;

2. The nature of serious mental illness, ~~mental retardation and/or~~ mental retardation (intellectual disability), substance abuse, or co-occurring disorders depending on the ~~population~~ individual's served, including clinical and developmental issues;

3. Different types of assessments, including functional assessment, and their uses in service planning;

4. Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

5. Types of mental health, mental retardation (intellectual disability) and substance abuse programs available in the locality;

6. The service planning process and major components of a service plan;

7. The use of medications in the care or treatment of the population served; and

8. All applicable federal and state laws, state regulations and local ordinances.

B. Employees or contractors providing case management services shall have skills in:

1. Identifying and documenting an individual's need for resources, services, and other supports;

2. Using information from assessments, evaluations, observation, and interviews to develop service plans;

3. Identifying and documenting how resources, services and natural supports such as family can be utilized to promote achievement of an individual's personal habilitative/rehabilitative and life goals; and

4. Coordinating the provision of services by diverse public and private providers.

C. Employees or contractors providing case management services shall have abilities to:

1. Work as team members, maintaining effective inter- and intra-agency working relationships;

2. Work independently performing position duties under general supervision; and

3. Engage and sustain ongoing relationships with individuals receiving services.

12VAC35-105-1255. Case manager choice.

The provider shall develop and implement a policy as to how individuals are assigned case managers and how they can request a change of their assigned case manager.

12VAC35-105-1270. Physical environment requirements of community gero-psychiatric residential services.

A. Providers shall be responsible for ensuring safe mobility and unimpeded access to programs or services by installing and maintaining ramps, handrails, grab bars, elevators, protective surfaces and other assistive devices or accommodations as determined by periodic review of the needs of the individuals being served. Entries, doors, halls and program areas, including bedrooms, must have adequate room to accommodate wheel chairs and allow for proper transfer of individuals. Single bedrooms shall have at least 100 square feet and multi-bed rooms shall have 80 square feet per individual.

B. Floors must have resilient, nonabrasive, and slip-resistant floor surfaces and floor coverings that promote mobility in areas used by individuals and promote maintenance of sanitary conditions.

C. Temperatures shall be maintained between 70°F and 80°F throughout resident areas.

D. Bathrooms, showers and program areas must be accessible to individuals. There must be at least one bathing unit available by lift, door or swivel-type tub.

E. Areas must be provided for quiet and for recreation.

F. Areas must be provided for charting, storing of administrative supplies, a utility room, employee hand washing, dirty linen, clean linen storage, clothes washing, and equipment storage.

12VAC35-105-1280. Monitoring.

Employees or contractors shall regularly monitor individuals in all areas of the residence to ensure safety.

12VAC35-105-1290. Service requirements for providers of gero-psychiatric residential services.

A. Providers shall provide mental health, nursing and rehabilitative services; medical and psychiatric services; and pharmaceutical services for each individual as specified in the ~~individualized services plan~~ ISP.

B. Providers shall provide crisis stabilization services.

C. Providers shall develop and implement written policies and procedures that support an active program of mental health and behavioral management directed toward assisting each individual to achieve outcomes consistent with the highest level of self-care, independence and quality of life. Programming may be on-site or at another location in the community.

D. Providers shall develop and implement written policies and procedures that respond to the nursing needs of each individual to achieve outcomes consistent with the highest level of self-care, independence and quality of life. Providers shall be responsible for:

1. Providing each individual services to prevent clinically avoidable complications, including but not limited to: skin care, dexterity and mobility, continence, hydration and nutrition;

2. Giving each individual proper daily personal attention and care, including skin, nail, hair and oral hygiene, in addition to any specific care ordered by the attending physician;

3. Dressing each individual in clean clothing and encouraging each individual to wear day clothing when out of bed;

4. Providing each individual tub or shower baths as often as needed, but not less than twice weekly, or a sponge bath daily if the medical condition prohibits tub or shower baths~~.~~;

5. Providing each individual appropriate pain management; and

6. Ensuring that each individual has his own personal utensils, grooming items, adaptive devices and other personal belongings including those with sentimental value.

E. Providers shall integrate behavioral/mental health care and medical/nursing care in the individualized services plan.

F. Providers shall have available nourishment between scheduled meals.

12VAC35-105-1300. Staffing requirements for community gero-psychiatric residential services.

A. Community gero-psychiatric residential services shall be under the direction of a:

1. Program director with experience in gero-psychiatric services.

2. Medical director.

3. Director of clinical services who is a registered nurse with experience in gero-psychiatric services.

B. Providers shall provide qualified nursing supervisors, nurses, and certified nurse aides on all shifts, seven days per week, in sufficient number to meet the assessed nursing care and behavioral management needs determined by the ~~individualized services plans~~ ISPs.

C. Providers shall provide qualified staff for behavioral, psychosocial rehabilitation, rehabilitative, mental health, or recreational programming to meet the needs determined by the ~~individualized services plan~~ ISP. These services shall be under the direction of a registered nurse, licensed psychologist, licensed clinical social worker, or licensed therapist.

12VAC35-105-1310. Interdisciplinary services planning team.

A. At a minimum, a registered nurse, a licensed psychologist, a licensed social worker, a therapist (recreational, occupational or physical therapist), a pharmacist, and a psychiatrist shall participate in the development and review of the ~~individualized services plan~~ ISP. Other employees or contractors as appropriate shall be included.

B. The interdisciplinary services planning team shall meet to develop the ~~individualized services plans~~ ISP and review it quarterly. Members of the team shall be available for consultation on an as needed basis.

C. The interdisciplinary services planning team shall review the medications prescribed at least quarterly and consult with the primary care physician as needed.

D. The interdisciplinary services planning team shall integrate medical care plans prescribed by the primary care physician into the ~~individualized services plan~~ ISP and consult with the primary care physician as needed.

12VAC35-105-1330. Medical director.

Providers of community gero-psychiatric ~~community~~ residential services shall employ or have a written agreement with one or more psychiatrists with training and experience in gero-psychiatric services to serve as medical director. The duties of the medical director shall include, but are not limited to:

1. Responsibility for the overall medical and psychiatric care;

2. Advising the program director and the director of clinical services on medical/psychiatric issues, including the criteria for residents to be admitted, transferred or discharged;

3. Advising on the development, execution and coordination of policies and procedures that have a direct effect upon the quality of medical, nursing and psychiatric care delivered to residents; and

4. Acting as liaison and consulting with the administrator and the primary care physician on matters regarding medical, nursing and psychiatric care policies and procedures.

12VAC35-105-1340. Physician services and medical care.

A. Each individual in a community gero-psychiatric residential service shall be under the care of a primary care physician. Nurse practitioners and physician assistants licensed to practice in Virginia may provide care in accordance with their practice agreements. Prior to, or at the time of admission, each individual, his ~~legally~~ authorized representative, or the entity responsible for his care shall designate a primary care physician.

B. The primary care physician shall conduct a physical examination at the time of admission or within 72 hours of admission into a community gero-psychiatric residential service. The primary care physician shall develop, in coordination with the interdisciplinary services planning team, a medical care plan of treatment for an individual.

C. All physicians or other prescribers shall review all medication orders at least every 60 days or whenever there is a change in medication.

D. The provider shall have a signed agreement with a local general hospital describing back-up and emergency medical care plans.

Article 7
Intensive Community Treatment and Program of Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. ~~Severe~~ Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder, that seriously impairs functioning in the community. Individuals with a sole diagnosis of substance addiction or abuse or mental retardation (intellectual disability) are not eligible for services.

2. ~~Impairments on a continuing or intermittent basis without intensive community support to include one or more of the following~~ Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:

a. ~~Inability to consistently perform~~ Performing practical daily living tasks ~~required for basic adult functioning in the community~~;

b. ~~Persistent or recurrent failure to perform daily living tasks except with significant support of assistance by family, friends or relatives~~ Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or

~~c. Inability to be consistently employed at a self-sustaining level or inability to consistently carry out homemaker roles; or~~

~~d. Inability to maintain~~ c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following ~~problems~~:

a. Residence in a state mental health facility or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;

b. ~~High user of state mental health facility or other acute psychiatric hospital inpatient services within the past two years or a frequent user of psychiatric emergency services (more than four times per year)~~ Multiple admissions to or at least one recent long-term stay (30 days or more) in a state mental health facility or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;

c. ~~Intractable (i.e., persistent or very recurrent)~~ Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);

d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);

e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest ~~and~~ or incarceration);

f. ~~Unable to meet~~ Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or

g. ~~Unable~~ Inability to consistently participate in traditional office-based services.

B. Individuals receiving PACT ~~individuals~~ or ICT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. ~~Moving~~ Change in the individual's residence to a location out of the service area;

2. Death of the individual;

3. Incarceration of the individual for a period to exceed a year or long term hospitalization ~~for~~ (more than one year); however, the provider is expected to prioritize these individuals for PACT or ICT services upon their anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;

4. Choice of the individual ~~(the~~ with the provider ~~is~~ responsible for revising the ~~individualized services plan~~ ISP to meet any concerns of the individual leading to the choice of ~~discharge)~~ discharge; or

5. ~~Demonstration by the individual of an ability to function~~ Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team.

12VAC35-105-1370. Treatment team and staffing plan.

A. ~~ICT and PACT~~ Services are delivered by interdisciplinary teams.

1. ~~The~~ PACT and ICT ~~team~~ teams shall ~~have employees or contractors, 80% of whom meet the qualifications of QMHP, who are qualified to provide the services described in 12VAC35-105-1410, including at least five full-time equivalent clinical employees or contractors on an ICT team and at least 10 full-time equivalent clinical employees or contractors on a PACT team, a program assistant, and a full- or part-time psychiatrist. The team shall~~ include the following positions:

a. Team Leader — one full-time ~~equivalent (FTE)~~ QMHP with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.

b. Nurses — ~~one or more FTE registered nurse with one year of experience or licensed practical nurse with three years of experience in the provision of mental health services to adults with serious mental illness~~ PACT and ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.

c. ~~Mental health professionals — two or more FTE QMHPs (half of whom shall hold a master's degree), including a vocational specialist and a substance abuse specialist~~ One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to consumers in their area of specialty and provide leadership to other team members to also assist individuals with their self identified employment or substance abuse recovery goals.

d. Peer specialists — one or more ~~FTE~~ full-time QPPMH or QMHP who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.

e. Program assistant — one full-time person with skills and abilities in medical records management~~, operating and coordinating~~ shall operate and coordinate the management information system, ~~maintaining~~ maintain accounts and budget records for individual and program expenditures, and ~~providing~~ provide receptionist activities.

f. Psychiatrist — one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. ~~In addition, a PACT team includes at least three FTE nurses (at least one of whom is an RN and five or more mental health professionals.~~ QMHP and mental health professional standards:

a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall meet QMHP standards and shall be qualified to provide the services described in 12VAC35-105-1410.

b. Mental health professionals – At least half of the clinical employees or contractors, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity:

a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.

~~B.~~ b. ICT and PACT teams ~~must~~ shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.

c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.

d. A transition plan ~~will~~ shall be required of PACT teams that will allow for "start-up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and ~~client~~ consumer capacity.

~~C.~~ B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to ~~plan for~~ address or prevent emergency and crisis situations.

~~D.~~ C. ICT teams shall operate a minimum of 8 hours per day, 5 days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and 8 hours each weekend day and each holiday.

~~E.~~ D. The ICT and PACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily. The PACT team shall operate an after-hours on-call system and be available to individuals by telephone or in person.

12VAC35-105-1390. ICT and PACT service daily operation and progress notes.

A. ICT teams and PACT teams shall conduct daily organizational meetings Monday through Friday at a regularly scheduled time to review the status of all individuals and the

outcome of the most recent employee or contractor contact, assign daily and weekly tasks to employees and contractors, revise treatment plans as needed, plan for emergency and crisis situations, and to add service contacts that are identified as needed.

B. A daily log that provides a roster of individuals served in the ICT or PACT services program and documentation of services provided and contacts made with them shall be maintained and utilized in the daily team meeting. There shall also be at least a weekly individual progress note documenting ~~progress or lack of progress toward goals and objectives as outlined in the Psychosocial Rehabilitation Services Plan~~ services provided in accordance with the ISP or attempts to engage the consumer in services.

12VAC35-105-1400. ICT and PACT assessment.

The provider shall solicit the individual's own assessment of his needs, strengths, goals, preferences and abilities to identify the need for recovery oriented treatment, rehabilitation and support services and the status of his environmental supports within the individual's cultural context. ~~The~~ With the participation of the individual, the provider will assess:

1. Psychiatric history, mental status and diagnosis, including the content of an advance directive;

2. Medical, dental and other health needs;

3. Extent and effect of drug or alcohol use;

4. Education and employment including current daily structures use of time, school or work status, interests and preferences ~~and the effect of psychiatric symptomatology on~~ and supports and barriers to educational and employment performance;

5. Social development and functioning including childhood and family history, ~~culture and~~ religious beliefs, leisure interests, and social skills;

6. Housing and daily living skills, including the support needed to obtain and maintain decent, affordable housing integrated into the broader community; the current ability to meet basic needs such as personal hygiene, food preparation, housekeeping, shopping, money management and the use of public transportation and other community based resources;

7. Family and social network including the current scope and strength of a individual's network of family, peers, friends, and co-workers, and their understanding and expectations of the team's services;

8. Finances and benefits including the management of income, the need for and eligibility for benefits, and the limitations and restrictions of those benefits; and

9. Legal and criminal justice involvement including the guardianship, commitment, representative payee status, and the experience as either victim or accused person.

12VAC35-105-1410. Service requirements.

Providers shall document that the following services are provided consistent with the individual's assessment and ~~individualized services plan~~ ISP.

1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual;

2. Case management;

3. Nursing;

4. ~~Symptom assessment and management~~ Support for wellness self-management, including the development and implementation of individual recovery plans; symptom assessment; and recovery education;

5. Psychopharmacological treatment, administration and monitoring;

6. Substance abuse assessment and treatment for individuals with a ~~dual~~ co-occurring diagnosis of mental illness and substance abuse;

7. Individual supportive therapy;

8. Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time;

9. Supportive in-home services;

10. Work-related services to help find and maintain employment;

11. Support for resuming education;

12. Support, education, consultation, and skill-teaching to family members and significant others;

13. Collaboration with families and assistance to individuals with children;

14. Direct support to help individuals secure and maintain decent, affordable housing that is integrated into the broader community and to obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; and

15. Mobile crisis assessment, ~~intervention~~ interventions to prevent or resolve potential crises, and facilitation into and out of psychiatric hospitals.

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 (12VAC35-105)

Initial Provider Application For Licensing (rev.1/10).

Renewal Provider Application For Licensing (rev. 2/09).

Service Modification - Provider Request, DMH 966E 1140 (rev. 1/09).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-105)

~~Diagnostic Criteria from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, American Psychiatric Association, Washington, D.C., 1994.~~

VA.R. Doc. No. R07-260; Filed January 6, 2010, 10:09 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-30, 14VAC5-395-40).**

Statutory Authority: §§ 6.1-2.25 and 12.1-13 of the Code of Virginia.

Effective Date: January 25, 2010.

Agency Contact: Scott White, Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email scott.white@scc.virginia.gov.

Summary:

The amendments incorporate statutory changes made to § 6.1-2.26 of the Code of Virginia that shift the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authority. The amendments incorporate these statutory changes by making the Bureau of Insurance responsible for registering title insurance agents and title insurance companies that conduct settlements.

AT RICHMOND, JANUARY 7, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00249

Ex Parte: In the matter of Adopting
Amendments to the Rules Governing
Settlement Agents

ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered herein November 12, 2009, all interested persons were ordered to take notice that subsequent to December 21, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments proposed by the Bureau of Insurance ("Bureau") to the Commission's "Rules Governing Settlement Agents" set forth in Chapter 395 of Title 14 of the Virginia Administrative Code unless on or before December 21, 2009, any person objecting to the adoption of the proposed amendments filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed amendments on or before December 21, 2009.

No comments or requests for a hearing were filed with the Clerk.

THE COMMISSION, having considered the proposed amendments, is of the opinion that the attached amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Chapter 395 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Settlement Agents," which are to be published in Chapter 395 of Title 14 of the Virginia Administrative Code, amended at 14 VAC 5-395-30 and 14 VAC 5-395-40, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective January 25, 2010.

(2) AN ATTESTED COPY hereof, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the adoption of the amendments to the Rules by mailing a copy of this Order, including a clean copy of the attached final amended Rules, to all licensed title insurance companies and other interested parties designated by the Bureau.

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

Register of Regulations and shall make this Order and the attached amended Rules available on the Commission's website, http://www.scc.virginia.gov/caseinfo.htm.

(4) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) of this Order.

14VAC5-395-30. Registration.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent shall be required to be registered with the ~~Virginia State Bar~~ bureau in accordance with the provisions of § 6.1-2.26 of the Code of Virginia.

14VAC5-395-40. Insurance and bonding requirements.

A. At the time of registration ~~with the Virginia State Bar~~, every title insurance agent and title insurance agency acting as a settlement agent shall file ~~with the bureau~~ a certification on a form prescribed by the bureau, that the settlement agent has, and thereafter shall keep in force for as long as they are acting as a settlement agent, the following:

1. An errors and omissions insurance policy providing limits of at least $250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia.

2. A blanket fidelity bond or employee dishonesty insurance policy providing limits of at least $100,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may request a waiver of this requirement on their certification form.

B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia ~~or is registered with the Virginia State Bar~~ shall file ~~with the bureau a~~ an original surety bond in an amount not less than $200,000 on a form prescribed by the bureau~~. The original surety bond shall be filed with the bureau~~ at the time of registration ~~with the Virginia State Bar~~ and, if such bond is canceled, at the time a replacement bond is issued.

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-395)

Statement on Auditing Standards, Special Reports, July 1, 1989, American Institute of Certified Public Accountants.

~~Securities Act Regulations (SEC970016).~~

VA.R. Doc. No. R10-2219; Filed January 8, 2010, 11:03 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (adding 18VAC48-50-10 through 18VAC48-50-290).**

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

Effective Date: April 1, 2010.

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

Summary:

This regulation establishes the licensure requirements for common interest community managers, as well as the standards of practice and conduct for common interest community managers and requirements for training programs. The qualifications for licensure have been amended to require at least one supervisory employee or officer with five years experience to complete a comprehensive training program approved by the board, and require at least 50% of persons who have principal responsibility to obtain one of the previously approved designations along with requisite experience, or completion of an introductory training program approved by the board along with completion of requisite experience. In addition to the training program provisions, clarifying changes were made throughout the regulations, including the qualifications for licensure, bond/insurance reporting requirements for provisional licensees, and the prohibited acts. The primary change from the proposed regulation is the addition of criteria for training program approval. Other changes made since the proposed regulation were mainly clarifying in nature.

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 50
COMMON INTEREST COMMUNITY MANAGER REGULATIONS

Part I
General

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

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

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager that has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Contact hour" means 50 minutes of instruction.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed common interest community manager.

"Gross receipts" means all revenue derived from providing management services to common interest communities in the Commonwealth of Virginia, excluding pass-through expenses or reimbursement of expenditures by the regulant on behalf of an association.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the board.

"Reinstatement" means the process and requirements through which an expired license can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license for another period of time.

"Responsible person" means the employee, officer, manager, owner, or principal of the firm who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation or other registered business entity, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

Part II
Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure shall submit an application with the appropriate fee specified in 18VAC48-50-60. Application shall be made on forms provided by the department.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

A firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. Firms that fail to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC48-50-30. Qualifications for licensure.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be

disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions, in any jurisdiction, within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the applicant's principals hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to [~~applying for~~ obtaining] licensure in Virginia.

H. The applicant shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

I. Applicants for licensure shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

J. In lieu of the provisions of subsection I of this section, an applicant may be licensed provided the applicant certifies to the board that the applicant has (i) at least one supervisory employee or officer with five years of experience in providing management services and who has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, involved in all aspects of the management services offered and provided by the firm and (ii) at least 50% of persons who have principal responsibility for management services [to a common interest community in the Commonwealth of Virginia] meet one of the following:

1. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;

2. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application;

3. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of

experience must have been gained immediately preceding application; or

4. Have completed an introductory training program, as set forth in 18VAC48-50-250 A, and [passed a] certifying examination approved by the board and certify having two years experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application.

K. The firm shall designate a responsible person.

18VAC48-50-40. Application denial.

The board may refuse initial licensure due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

Part III
Fees

18VAC48-50-50. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due (excluding annual assessment in 18VAC48-50-80)	When Due
Initial Common Interest Community Manager Application	$100	+	25	$125	With initial application filed on or after January 1, 2009
Common Interest Community Manager Renewal	$100			$100	With renewal application
Common Interest Community Manager Reinstatement (includes a $200 reinstatement fee in addition to the regular $100 renewal fee)	$300			$300	With renewal application
Training Program Provider Initial Application	$100			$100	With application
Training Program Provider [~~Add~~ Additional] Program	$50			$50	With application

*In accordance with § 55-530.1 of the Code of Virginia.

18VAC48-50-70. Annual assessment.

In addition to the fees listed in 18VAC48-50-60, each common interest community manager must submit an annual assessment in accordance with § 54.1-2349 A 1 of the Code of Virginia. The annual assessment shall be submitted with the initial application and with each renewal application. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable documentation may include, but is not limited to, audits, tax returns, or financial statements.

18VAC48-50-80. Provisional licenses.

Provisional licenses will be subject to the annual assessment for each year that the provisional license is in effect. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable

documentation may include, but is not limited to, audits, tax returns, or financial statements.

Provisional licensees must submit annual proof of current bond or insurance policy in accordance with 18VAC48-50-30 D, and are also subject to the provisions of 18VAC48-50-150 D. Failure to submit the annual assessment and proof of current bond or insurance policy within 30 days of the request by the board shall result in the automatic suspension of the license.

Part IV
Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A fee shall be required for renewal. In accordance with § 54.1-2346 F of the Code of Virginia, provisional licenses shall expire on June 30, 2011, and shall not be renewed.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon completion of the renewal application, submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, and payment of the fees specified in 18VAC48-50-60 and 18VAC48-50-70. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et seq.) of this chapter.

B. Applicants for renewal shall continue to meet all of the qualifications for licensure set forth in 18VAC48-50-30.

18VAC48-50-110. Reinstatement required.

A. If the requirements for renewal of a license, including receipt of the fees by the board and submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, are not completed within 30 days of the license expiration date, the regulant shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

B. A license may be reinstated for up to six months following the expiration date. After six months, the license may not be reinstated under any circumstances and the regulant must meet all current entry requirements and apply as a new applicant.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-120. Status of license during the period prior to reinstatement.

A regulant who applies for reinstatement of a license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a current regulant.

The board may deny renewal or reinstatement of a license if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Part V
Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-2351 H of the Code of Virginia, or revoke, suspend or refuse to renew any license when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-150. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure found in 18VAC48-50-30 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a regulant shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 D within five days of the change.

18VAC48-50-160. Maintenance and management of accounts.

Regulants shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those funds of the common interest community manager.

18VAC48-50-170. Change of business entity requires a new license.

A. Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the license becomes void and shall be returned to the board within 30 days of the change. Such changes include but are not limited to:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor;

3. Formation, reformation, or dissolution of a general partnership, limited partnership, corporation, limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia; or

4. The suspension or termination of the corporation's existence by the State Corporation Commission.

B. When a new firm is formed, the new firm shall apply for a new license on a form provided by the board before engaging in any activity regulated by Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

18VAC48-50-180. Notice of adverse action.

A. Regulants shall notify the board of the following actions [against the firm, the responsible person, and any principals of the firm]:

1. Any disciplinary action taken by [~~another~~ any] jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, of any felony or of any misdemeanor in any jurisdiction. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC48-50-190. Prohibited acts.

A. The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Allowing the common interest community manager license to be used by another.

3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining, renewing, or reinstating a license by false or fraudulent representation.

4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the [management] contract, operating agreement, or [association] governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

9. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

10. Incompetence in providing management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to §§ 55-510 (Property Owners Association Act), 55-79.74:1 (Condominium Act), and 55-474 (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include, but not be limited to, the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Record retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

B. Prior to commencement of the terms of the contract or acceptance of payments, the contract shall be signed by the regulant and the client or the client's authorized agent.

18VAC48-50-200. Establishment of code of conduct.

The firm shall establish and distribute to the firm's employees, principals, and agents a written code of conduct to address business practices including the appropriateness of giving and accepting gifts, bonuses, or other remuneration to and from common interest communities or providers of services to common interest communities. In accordance with clause (ii) of § 54.1-2346 E of the Code of Virginia, the code of conduct for officers, directors, and employees shall also address disclosure of relationships with other firms that provide services to common interest communities and that may give rise to a conflict of interest.

18VAC48-50-210. Establishment of internal accounting controls.

The firm shall establish written internal accounting controls to provide adequate checks and balances over the financial activities and to manage the risk of fraud and illegal acts. The internal accounting controls shall be in accordance with generally accepted accounting practices.

18VAC48-50-220. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to [a request by] the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a regulant must respond to an inquiry by the board or its agent within 21 days.

Part VI
Training Programs and Examination

18VAC48-50-230. Training programs generally.

All training programs [proposed for the purposes of meeting the requirements of this chapter] must be approved by the board. Any or all of the [approved] training programs can be met using distance or online education technology. Training programs may be approved retroactively; however, no [~~regulant~~ applicant] will receive credit for the training program until such approval is granted by the board.

18VAC48-50-240. Approval of common interest community manager training programs.

Each provider of a training program shall submit an application for program approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC48-50-60, the application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Program contact hours;

4. Schedule of training program, if established, including dates, times, and locations;

5. Instructor information, including name, license [number or] numbers, if applicable, and a list of [~~other~~] trade-appropriate designations, as well as a professional resume with a summary of [~~acceptable~~] teaching experience and subject-matter knowledge and qualifications [acceptable to the board];

6. A summary of qualifications and experience in providing training for common interest communities;

7. Training program and material fees; and

8. Training program syllabus.

18VAC48-50-250. Training program requirements.

A. In order to qualify as an introductory training program under 18VAC48-50-30 J 4, the introductory training program must include a minimum of 16 contact hours and the syllabus shall encompass all of the subject areas set forth in subsection C of this section.

B. In order to qualify as a comprehensive training program under 18VAC48-50-30 J 1, the comprehensive training program must include a minimum of 80 contact hours and the syllabus shall include at least 40 contact hours encompassing all of the subject areas set forth in subsection C of this section and may also include up to 40 contact hours in other subject areas approved by the board.

C. The following subject areas as they relate to common interest communities and associations shall be included in each training program.

1. Governance, legal matters, and communications;

2. Financial matters, including budgets, reserves, investments, [internal controls,] and assessments;

3. Contracting;

4. Risk management and insurance;

5. Management ethics for common interest community managers;

6. Facilities maintenance; and

7. Human resources.

D. All training programs are required to have a final, written examination.

[E. All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.]

18VAC48-50-260. Maintenance of records.

All providers must establish and maintain a record for each student. The record shall include the student's name and address, [~~social security number or control number issued by the Department of Motor Vehicles,~~] the training program name and hours attended, the training program syllabus or outline, the name or names of the instructors, the date of successful completion, and the board's approved training program code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

18VAC48-50-270. Reporting of changes.

Any change in the information provided in 18VAC48-50-240 must be reported to the board within 30 days of the change with the exception of changes in the schedule of training program offerings, which must be reported within 10 days of the change. [~~Failure to report the changes as required may result in the withdrawal of approval of a training program by the board.~~ Any change in information submitted will be reviewed to ensure compliance with the provisions of this chapter.]

18VAC48-50-280. Withdrawal of approval.

The board may withdraw approval of any training program for the following reasons:

1. The training program being offered no longer meets the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, training program information, or student records or fails to produce records required by 18VAC48-50-260.

4. A change in the information provided [~~in~~ that results in noncompliance with] 18VAC48-50-240, except for subdivision 4 of 18VAC48-50-240.

[5. Failure to comply with 18VAC48-50-270.]

18VAC48-50-290. Examinations.

All examinations required for licensure shall be approved by the board and [~~provided~~ administered] by the board [~~or~~ ,] a testing service acting on behalf of the board, or another governmental agency or organization.

VA.R. Doc. No. R09-1641; Filed January 11, 2010, 2:11 p.m.

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-100, 18VAC50-22-140, 18VAC50-22-170, 18VAC50-22-250).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: April 1, 2010.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Summary:

This regulatory action (i) increases fees for initial licensure and license renewal and reinstatement of Class A, B, and C contractors; (ii) eliminates the water well examination as it is no longer applicable to contractors; and (iii) increases fees for a designated employee change, a qualified individual change, and the addition of a classification or specialty. Since publication of the proposed fee structure, the fees for (i) initial licensure and license renewal and reinstatement of Class A, B, and C contractors and (ii) a designated employee change, a qualified individual change, and the addition of a classification or specialty were increased further in compliance with § 54.1-113 of the Code of Virginia. In addition, the proposed $50 Virginia Transaction Recovery Fund assessment upon license renewal and reinstatement has been removed.

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.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	~~$150~~ [~~$200~~ $210]
Class B Initial License	with license application	~~$175~~ [~~$305~~ $345]
Class A Initial License	with license application	~~$200~~ [~~$330~~ $360]
~~Declaration of Designated Employee~~	~~with license application~~	~~$40~~
Qualified Individual Exam Fee	with exam application	$20
Class B Exam Fee	with exam application ($20 per section)	$40
Class A Exam Fee	with exam application ($20 per section)	$60
~~Water Well Exam~~	~~with exam application~~	~~$40~~

Note: A $25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	~~$110~~ [~~$175~~ $195]
Class B Renewal	with renewal application	~~$150~~ [~~$200~~ $225]
Class A Renewal	with renewal application	~~$165~~ [~~$225~~ $240]

[~~Note: A $50 Recovery Fund assessment is also required with each renewal.~~]

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	~~$260*~~ [~~$375*~~ $405*]
Class B Reinstatement	with reinstatement application	~~$325*~~ [~~$425*~~ $460*]
Class A Reinstatement	with reinstatement application	~~$365*~~ [~~$475*~~ $490*]

*Includes renewal fee listed in 18VAC50-22-140.

[~~Note: A $50 Recovery Fund assessment is also required with reinstatement.~~]

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

18VAC50-22-250. Fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Change of Designated Employee	with change form	~~$40~~ [~~$80~~ $110]
Change of Qualified Individual	with change form	~~$40~~ [~~$80~~ $110]
Addition of Classification or Specialty	with addition application	~~$40~~ [~~$80~~ $110]

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 (18VAC50-22)

Contractor Licensing Information, 27INTRO [~~(8/07)~~ (5/09)].

Trade-Related Examinations and Qualifications Information, 27EXINFO (8/07).

License Application, 27LIC (rev.[~~8/08)~~ 4/10)].

Class C License Application (Short Form), 27CSF (rev. ~~8/08)~~ [~~insert date)~~ 4/10)].

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. ~~8/07)~~ [~~insert date)~~ 4/10)].

Change of Qualified Individual Application, 27CHQI (rev. ~~8/07)~~ [~~insert date)~~ 4/10)].

Change of Designated Employee Application, 27CHDE (rev. ~~8/07)~~ [~~insert date)~~ 4/10)].

Changes of Responsible Management Form, 27CHRM (eff. 8/07).

Experience Reference, 27EXP (8/07).

Certificate of License Termination, 27TERM [~~(8/07)~~ (5/09)].

[~~Education Provider Registration/Course Approval, 27CONTEDREG (eff. 4/08).~~

Education Provider Registration/Course Approval Application; Contractors Prelicense and Continuing Education, 27EDREG (rev. 6/09).]

Education Provider Listing Form, 27EDLIST [~~(eff. 4/08)~~ (5/09)].

Financial Statement, 27FINST [~~(eff. 8/07)~~ (5/09)].

Additional Qualified Individual Experience Reference Form, 27QIEXP [~~(eff. 8/07)~~ (5/09)].

VA.R. Doc. No. R08-1169; Filed January 11, 2010, 4:53 p.m.

Final Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-90, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-150; repealing 18VAC50-30-110).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: April 1, 2010.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Summary:

The regulatory action (i) increases fees for (a) initial licensure and license renewal and reinstatement of tradesmen, liquefied petroleum gas fitters, and natural gas providers; (b) initial certification and certification renewal and reinstatement for backflow prevention device workers, elevator mechanics, and water well systems providers; (c) card exchanges; and (d) trade designation additions and deletions; and (ii) repeals fees for the issuance of replacement cards. Since publication of the proposed fee structure, the fees for card exchanges, renewals, and trade designation were increased further in compliance with § 54.1-113 of the Code of Virginia.

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.

18VAC50-30-90. Fees for licensure and certification.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	~~$90~~ $130
Original tradesman license without examination	~~$90~~ $130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	~~$40~~ [~~$80~~ $95]
Liquefied petroleum gas fitter	~~$90~~ $130
Natural gas fitter provider	~~$90~~ $130
Backflow prevention device worker certification	~~$90~~ $130
Elevator mechanic certification	~~$90~~ $130
Water well systems provider certification	~~$90~~ $130

18VAC50-30-110. ~~Fees for duplicate cards.~~ (Repealed.)

~~The fee for a duplicate card shall be as follows:~~

~~First request~~	~~$30~~
~~Second request~~	~~$30~~
~~Third request~~	~~$45~~

~~Any request for the issuance of such a card must be in writing to the board. Requests for a third or subsequent duplicate card may be referred for possible disciplinary action.~~

18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	~~$40~~ [~~$80~~ $90]
Liquefied petroleum gas fitter license	~~$40~~ [~~$80~~ $90]
Natural gas fitter provider license	~~$40~~ [~~$80~~ $90]
Backflow prevention device worker certification	~~$40~~ [~~$80~~ $90]

Elevator mechanic certification	~~$40~~ [~~$80~~ $90]
Water well systems provider certification	~~$40~~ [~~$80~~ $90]

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	~~$130*~~ $140*
Liquefied petroleum gas fitter license	~~$130*~~ $140*
Natural gas fitter provider license	~~$130*~~ $140*
Backflow prevention device worker certification	~~$130*~~ $140*
Elevator mechanic certification	~~$130*~~ $140*
Water well systems provider certification	~~$130*~~ $140*

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part IV
Standards of Practice

18VAC50-30-150. Adding or deleting trade designations.

A. A regulant may add designations to a license by demonstrating, on a form provided by the board, acceptable evidence of experience, and examination if appropriate, in the designation sought. The experience, and successful completion of examinations, must be demonstrated by

meeting the requirements found in Part II (18VAC50-30-20 et seq.) of this chapter.

B. The fee for each addition is ~~$40~~ [~~$80~~ $90] . All fees required by the board are nonrefundable.

C. While a regulant may have multiple trade designations on his license, the renewal date will be based upon the date the card was originally issued to the individual by the board, not the date of the most recent trade designation addition.

D. If a regulant is seeking to delete a designation, then the individual must provide a signed statement listing the designation to be deleted. There is no fee for the deletion of a designation. If the regulant only has one trade or level designation, the deletion of that designation will result in the termination of the license.

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 (18VAC50-30)

Tradesman License Application, 2710LIC (rev. ~~8/07)~~ [~~(*insert date)*~~ 4/10)].

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. ~~8/07)~~ [~~(*insert date)*~~ 4/10)].

Elevator Mechanic Certification Application, 2710ELE (rev. ~~8/07)~~ [~~(*insert date)*~~ 4/10)].

Individual Experience Form, 2710EXP (rev. ~~8/07)~~ [~~(2/08)~~ 5/09)].

Vocational Training Form, 2710VOTR (rev. ~~8/07)~~ [~~(2/08)~~ 5/09)].

Education Provider Registration/Course Approval Application, 27edreg [~~(eff. 8/06)~~ (rev. 5/09)].

Certified Water Well System Provider Application, 2710WSP ~~(eff. 11/07)~~ [(~~*insert date)*~~ (rev. 4/10)].

[Education Provider Listing Form (rev. 5/09).

Temporary Elevator Mechanic Certification (rev. 4/10).]

VA.R. Doc. No. R08-1262; Filed January 11, 2010, 4:55 p.m.

BOARD OF MEDICINE

Final Regulation

Title of Regulation: **18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-40, 18VAC85-80-45, 18VAC85-80-50, 18VAC85-80-65, 18VAC85-80-70, 18VAC85-80-72, 18VAC85-80-73, 18VAC85-80-80, 18VAC85-80-90, 18VAC85-80-100, 18VAC85-80-110; adding 18VAC85-80-111; repealing 18VAC85-80-61).**

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

Effective Date: March 3, 2010.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The amendments establish requirements for the licensure of occupational therapy assistants as mandated by Chapters 64 and 89 of the 2008 Acts of Assembly.

The regulations specify the national credential for licensure, the requirements for continuing competency and renewal, fees for licensure as an occupational therapy assistant (OTA), the provisions for supervision of OTAs, and the perimeters for practice. In order to be licensed, an applicant must pass the certification examination for an occupational therapy assistant from the National Board for Certification in Occupational Therapy (NBCOT). Practice by an OTA must be supervised by an occupational therapist (OT) and include services that do not require the clinical decision or specific knowledge, skills, and judgment of a licensed OT nor the discretionary aspects of the initial assessment, evaluation, or development of a treatment plan.

Revisions to the proposed regulations (i) change occupational therapy "personnel" to occupational therapy "assistants"; and (ii) change the requirement for countersigning by an OT of documentation in a patient record entered by an OTA from "within 10 days of such information being recorded" to countersigning at the time of review and evaluation required (at least once every tenth treatment session or 30 calendar days, whichever comes first).

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

18VAC85-80-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board of Occupational Therapy.

~~"Board" means the Virginia Board of Medicine.~~

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be $130; for the occupational therapy assistant, it shall be $70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be $180; for the occupational therapy assistant, it shall be $90.

3. The fee for active license renewal for an occupational therapist shall be $135 ~~and~~; for ~~inactive license renewal shall be $70 and~~ an occupational therapy assistant, it shall be $70. The fees for inactive license renewal shall be $70 for an occupational therapist and $35 for an occupational therapy assistant. Renewals shall be due in the birth month of the ~~licensed therapist~~ licensee in each even-numbered year.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for an occupational therapist and $30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another state for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-80-40. Educational requirements.

A. An applicant who has received his professional education in the United States, its possessions or territories, shall successfully complete all academic and fieldwork requirements of an accredited educational program as verified by the ACOTE.

B. An applicant who has received his professional education outside the United States, its possessions or territories, shall successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and as required by the NBCOT and submit proof of proficiency in the English language by passing the Test of English as a Foreign Language (TOEFL) with a score acceptable to the board. TOEFL may be waived upon evidence of English proficiency.

C. An applicant who does not meet the educational requirements as prescribed in subsection A or B of this section but who has received certification by the NBCOT as an occupational therapist or an occupational therapy assistant shall be eligible for licensure in Virginia and shall provide the board verification of his education, training and work experience acceptable to the board.

18VAC85-80-45. Practice by a graduate awaiting examination results.

A. A graduate of an accredited occupational therapy educational program may practice with the designated title of "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for ~~one year~~ six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

B. A graduate of an accredited occupational therapy assistant educational program may practice with the designated title of "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

18VAC85-80-50. Examination requirements.

A. An applicant for licensure to practice as an occupational therapist shall submit evidence to the board that he has passed the certification examination for an occupational therapist and any other examination required for initial certification from the NBCOT.

B. An applicant for licensure to practice as an occupational therapy assistant shall submit evidence to the board that he has passed the certification examination for an occupational therapy assistant and any other examination required for initial certification from the NBCOT.

18VAC85-80-61. ~~Certification of occupational therapy assistants.~~ (Repealed.)

~~Effective July 26, 2005, a person who holds himself out to be or advertises that he is an occupational therapy assistant or uses the designation "O.T.A." or any variation thereof shall have obtained initial certification by the National Board for Certification in Occupational Therapy (NBCOT) as a certified occupational therapy assistant.~~

18VAC85-80-65. Registration for voluntary practice by out-of-state ~~licenses~~ licensees.

Any occupational therapist or an occupational therapy assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

Part III
Renewal of Licensure; Reinstatement

18VAC85-80-70. Biennial renewal of licensure.

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26;

2. Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and

3. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

18VAC85-80-72. Inactive licensure.

A. A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued competency requirements of 18VAC85-80-71 and shall not be entitled to perform any act requiring a license to practice occupational therapy in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure;

3. If the license has been inactive for two to six years, documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist; and

4. Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

C. An occupational therapist or occupational therapy assistant who has had an inactive license for six years or more and who has not engaged in active practice, as defined in 18VAC85-80-10, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-80-73. Restricted volunteer license.

A. An occupational therapist or an occupational therapy assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist or occupational therapy assistant shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18VAC85-80-71.

18VAC85-80-80. Reinstatement.

A. An occupational therapist or an occupational therapy assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and shall pay the fee for reinstatement of his licensure as prescribed in 18VAC85-80-26.

B. An occupational therapist or occupational therapy assistant who has allowed his license to lapse for two years but less than six years, and who has not engaged in active practice as defined in 18VAC85-80-10, shall serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist.

C. An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. An applicant for reinstatement shall meet the continuing competency requirements of 18VAC85-80-71 for the number of years the license has been lapsed, not to exceed four years.

E. An occupational therapist or an occupational therapy assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-80-26 pursuant to § 54.1-2408.2 of the Code of Virginia.

Part IV
Practice of Occupational Therapy

18VAC85-80-90. General responsibilities.

A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.

18VAC85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests, and reporting observations and client capacities to the occupational therapist;

2. Participation in intervention planning, implementation, and review;

3. Implementation of interventions as determined and assigned by the occupational therapist;

4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;

5. Assistance in the formulation of the discharge summary and follow-up plans; and

6. Implementation of outcome measurements and provision of needed patient discharge resources.

18VAC85-80-110. Supervisory responsibilities of an occupational therapist.

A. Delegation to ~~unlicensed occupational therapy personnel~~ an occupational therapy assistant.

1. An occupational therapist shall be ~~responsible for supervision of occupational therapy personnel who work under his direction~~ ultimately responsible and accountable for patient care and occupational therapy outcomes under his clinical supervision.

2. An occupational therapist shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient ~~to unlicensed occupational therapy personnel~~ nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed occupational therapist.

3. Delegation shall only be made if, in the judgment of the occupational therapist, the task or procedures do not require the exercise of professional judgment, can be properly and safely performed by an appropriately trained ~~unlicensed occupational therapy personnel~~ occupational therapy assistant, and the delegation does not jeopardize the health or safety of the patient.

4. Delegated tasks or procedures shall be communicated to an occupational therapy assistant on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

B. The frequency, methods, and content of supervision are dependent on the complexity of patient needs, number and diversity of patients, demonstrated competency and experience of the assistant, and the type and requirements of the practice setting. The occupational therapist providing clinical supervision shall meet with the occupational therapy [~~personnel~~ assistant] to review and evaluate treatment and progress of the individual patients at least once every ~~fifth~~ tenth treatment session or ~~21~~ 30 calendar days, whichever occurs first. For the purposes of this subsection, group treatment sessions shall be counted the same as individual treatment sessions.

C. An occupational therapist ~~shall not~~ may provide clinical supervision for ~~more than~~ up to six occupational therapy personnel, to include no more than three occupational therapy assistants at any one time.

D. ~~An occupational therapist shall be responsible and accountable for the services provided by occupational therapy personnel under his clinical supervision.~~ The occupational therapy assistant shall document in the patient record any aspects of the initial evaluation, treatment plan, discharge summary, or other notes on patient care performed by the assistant [~~, and the supervising occupational therapist shall review and countersign within 10 days of such information being recorded~~. The supervising occupational therapist shall countersign such documentation in the patient record at the time of the review and evaluation required in subsection B of this section].

18VAC85-80-111. Supervision of unlicensed occupational therapy personnel.

A. Unlicensed occupational therapy personnel may be supervised by an occupational therapist or an occupational therapy assistant.

B. Unlicensed occupational therapy personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and

2. Certain routine patient-related tasks that, in the opinion of and under the supervision of an occupational therapist, have no potential to adversely impact the patient or the patient's treatment plan.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC85-80)

Instructions for Completing an Occupational Therapist Licensure Application (rev. 12/07).

Application for a License to Practice as an Occupational Therapist (rev. 12/07).

Instructions for Completing an Occupational Therapy Assistant Licensure Application (eff. 11/08).

Application for a License to Practice as an Occupational Therapy Assistant (eff. 11/08).

Form A, Claims History Sheet (rev. 8/07).

Form A, Occupational Therapy Assistant, Claims History Sheet (eff. 11/08).

Form B, Activity Questionnaire (rev. 8/07).

Form B, Occupational Therapy Assistant, Activity Questionnaire (eff. 11/08).

Form C, Clearance from Other State Boards (rev. 10/07).

Form C, Occupational Therapy Assistant, Clearance from Other State Boards (eff. 11/08).

Form L, Certificate of Professional Education (rev. 8/07).

Form L, Occupational Therapy Assistant, Certificate of Professional Education (eff. 11/08).

Board Approved Practice, Occupational Therapist Traineeship (rev. 8/07).

Instructions for Completing Reinstatement of Occupational Therapy Licensure (rev. 8/07).

Reinstatement Application Instructions for Occupational Therapy Practitioner Licensure after Mandatory Suspension, Suspension or Surrender (rev. 10/07).

Application for Reinstatement of Licensure to Practice Occupational Therapy (rev. 8/07).

Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. 8/07).

Supervised Practice Application, Occupational Therapy Reinstatement (rev. 8/07).

Continued Competency Activity and Assessment Form (rev. 4/00).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

VA.R. Doc. No. R09-1387; Filed January 11, 2010, 4:40 p.m.

EXECUTIVE ORDER NUMBER 106 (2009)

ADDITIONAL AUTHORIZATION DUE TO A SEVERE WEATHER EVENT THROUGHOUT THE COMMONWEALTH

On November 11, 2009 I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on severe weather from prolonged periods of wet and windy weather from the remnants of Tropical Storm Ida and a coastal Nor'easter causing widespread power outages, flooding and transportation difficulties throughout the State.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

In addition to the measures I took pursuant to Executive Order 101, I authorize the following actions to be taken by the Commissioner of the Virginia Marine Resources Commission:

The Marine Resources Commissioner is authorized to act on behalf of the Commission in issuing permits pursuant to Chapter 12 of Title 28.2 of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commissioner would be unable to convene a meeting of the full Commission in a timely manner. In an effort to address the impacts attributable to this Storm damage on the health, safety and general welfare of the citizens of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as is possible, no permits for encroachments over State-owned submerged lands shall be required to replace previously permitted structures that conform with the following criteria:

1. The pre-existing structure must have been previously authorized and in a serviceable condition prior to the onset of the Storm.

2. The replacement structure must be reconstructed in the same location and in identical or smaller dimensions as the previously permitted structure.

3. Reconstruction activities must be initiated prior to June 30, 2010 and completed prior to December 31, 2010.

4. Any property owner(s) seeking to replace a previously permitted structure pursuant to this Executive Order must submit to the Virginia Marine Resources Commission a letter attesting to the foregoing and containing suitable drawings of the proposed replacement structure(s) for comparison purposes.

5. No person may proceed with replacement of a previously permitted structure under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission.

This Executive Order shall be effective upon signing and shall remain in full force and effect until June 30, 2010 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd Day of December, 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 107 (2009)

DEVELOPMENT AND REVIEW OF REGULATIONS PROPOSED BY STATE AGENCIES

By virtue of the authority vested in me as Governor under Article V of the Constitution of the Commonwealth of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-4013 and 2.2-4017 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish policies and procedures for review of all new, revised, and existing regulations proposed by state agencies, which shall include for purposes of this executive order all agencies, boards, commissions and other entities of the Commonwealth within the Executive Branch which issue regulations. Nothing in this Executive Order shall be construed to limit my authority under Section 2.2-4013 to require an additional 30-day final adoption period, or to exercise any other rights and prerogatives existing under Virginia law.

General Policy

The Executive Branch agencies of the Commonwealth must consider, review, and promulgate many regulations each year. This Executive Order sets out procedures and requirements to ensure the efficiency and quality of Virginia's regulatory process.

All state employees who draft, provide policy analysis for, or review regulations shall carefully consider and apply the principles outlined below during the regulatory development and review process. All regulatory activity should be undertaken with the least possible intrusion in the lives of the citizens of the Commonwealth consistent with public health, safety, and welfare. Where applicable and to the extent permitted by law, it shall be the policy of the Commonwealth that, unless otherwise mandated by law, only regulations that

are necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.

A. Agencies shall identify the nature and significance of the problem a regulation is intended to address, including, where applicable, the failure of private markets and institutions to adequately address the problem.

B. Agencies shall identify and assess reasonably available alternatives in lieu of regulation for achieving the goals of a regulation, including where feasible and consistent with public health, safety, and welfare:

a. The use of economic incentives to encourage the desired outcomes (such as user fees or marketable permits);

b. The use of information disclosure requirements, rather than regulatory mandates, so that the public can make more informed choices; and

c. The use of performance standards in place of mandating specific techniques or behavior.

C. Regulatory development shall be based on the best reasonably available scientific, economic, and other information concerning the need for, and consequences of, the intended regulation. Agencies shall specifically cite the best reasonably available scientific, economic, and other information in support of regulatory proposals.

D. Regulations shall be designed to achieve their intended objective in the most efficient, cost-effective manner.

E. Regulations shall be clearly written and easily understandable by the individuals and entities affected.

F. All legal requirements related to public participation and all public participation guidelines shall be strictly followed to ensure that citizens have reasonable access and opportunity to present their comments and concerns. Agencies shall establish procedures that provide for a timely written response to all comments and the inclusion of suggested changes that would improve the quality of the regulation.

G. In addition to requirements set out in the Virginia Administrative Process Act, agencies shall post all rulemaking actions on the Virginia Regulatory Town Hall to ensure that the public is adequately informed of rulemaking activity.

H. Agencies, as well as reviewing entities, shall endeavor to perform their tasks in the regulatory process as expeditiously as the regulatory subject matter will allow and shall adhere to the time frames set out in this Executive Order.

I. Each agency head will be held accountable for ensuring that the policies and objectives specified in this Executive Order are put into effect. Agency heads shall ensure that information requested by the Department of Planning and Budget (DPB) or the Office of the Governor in connection with this Executive Order is provided on a timely basis.

J. Regulations shall not be considered perpetual and will be subject to periodic evaluation and review and modification, as appropriate, in accordance with the Administrative Process Act.

K. Public comment will be encouraged for all regulations. The Department of Planning and Budget shall work with state agencies to promote use of the Town Hall to facilitate public comment.

L. Regulatory development shall be conducted in accordance with statutory provisions related to impact on small businesses. The Department of Planning and Budget shall work with state agencies to address these requirements during the regulatory review process.

Applicability

The review process in this Executive Order applies to rulemaking initiated by agencies of the Commonwealth of Virginia in accordance with Article 2 of the Administrative Process Act (APA) (Section 2.2-4006 et seq. of the Code of Virginia).

With the exception of the requirements governing the periodic review of existing regulations, the posting of meeting agenda and minutes, and the posting of guidance documents, the requirements of this Executive Order may not apply to regulations exempt from Article 2 of the APA. A Cabinet Secretary or the Governor may request in writing that an agency comply with all or part of the requirements of this Executive Order for regulations exempt from Article 2 of the APA. Copies of such requests shall be forwarded to the Governor's Policy Office and DPB. In addition, a Cabinet Secretary may request in writing that certain Article 2 exempt regulations be further exempted from all or part of the requirements of this Executive Order.

These procedures shall apply in addition to those already specified in the APA, the agencies' public participation guidelines, and the agencies' basic authorizing statutes.

Any failure to comply with the requirements set forth herein shall in no way affect the validity of a regulation, create any cause of action or provide standing for any person under Article 5 of the APA (Section 2.2-4025 et seq. of the Code of Virginia), or otherwise challenge the actions of a government entity responsible for adopting or reviewing regulations.

Regulatory Review Process

Regulations shall be subject to Executive Branch review as specified herein. For each stage of the regulatory development process, DPB shall develop an appropriate background form describing the regulatory action. Agencies shall use the form to inform the public about the substance and reasons for the rulemaking. All agency regulatory packages shall be submitted on the Virginia Regulatory Town Hall and shall include the completed form for that stage of the

regulatory process and the text of the regulation where applicable.

Agencies shall submit regulatory packages to the Registrar on the Virginia Regulatory Town Hall within 14 days of being authorized to do so. The Counselor to the Governor may grant exceptions to this requirement for good cause.

A. Notice of Intended Regulatory Action (NOIRA)

DPB shall conduct an initial review of the submission of a Notice of Intended Regulatory Action to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. The NOIRA shall include the nature of the regulatory changes being considered and the relevant sections of the Virginia Administrative Code. The Director of DPB shall develop an appropriate review form for NOIRAs to ensure the most efficient use of DPB staff resources. DPB shall advise the appropriate Secretary and the Governor of DPB's determination. The agency shall be authorized to submit the NOIRA to the Registrar for publication when the Governor approves the NOIRA for publication. Public comments received following publication of the NOIRA should be encouraged and carefully considered in development of the proposed stage of a regulation.

If the Director of DPB advises the appropriate Secretary and the Governor that the NOIRA presents issues requiring further review, the NOIRA shall be forwarded to the Secretary. The Secretary shall review the NOIRA within seven days and forward a recommendation to the Governor. The Chief of Staff is hereby authorized to approve NOIRAs on behalf of the Governor.

B. Proposed Regulation and Fast-Track Regulations

Following the initial public comment period required by Section 2.2-4007 B of the Code of Virginia and taking into account the comments received, the agency shall prepare a regulatory review package. Agencies should complete the proposed regulation after the close of the NOIRA comment period as expeditiously as the subject matter will allow.

If a regulatory package is submitted to DPB, and DPB determines that the package is not substantially complete, then DPB shall notify the agency within 10 calendar days. At that time, the agency must withdraw the package from the Town Hall and resubmit the package only after all important missing elements identified by DPB have been completed.

A proposed regulatory action shall be in as close to final form as possible, including completed review by all appropriate technical advisory committees. A proposed regulation shall not address new issues that were not disclosed to the public when the NOIRA was published. If an agency can demonstrate a compelling reason to include new issues, an exception to this policy may be granted by the Chief of Staff during the proposed regulation review process.

The Attorney General's Office will also be requested to provide any appropriate comments for consideration by the Governor with respect to the proposed regulation. It is my intent that this process for feedback be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

DPB shall review the proposed regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 45 days of receiving a complete proposed regulation package from the agency, the Director of DPB shall advise the Secretary of DPB's determination. The Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor. The Chief of Staff is hereby authorized to approve proposed regulations on behalf of the Governor. Within 14 days of receiving notification that the Governor has approved the proposed regulation package, the agency shall submit the proposed regulation package to the Registrar for publication, unless an exception to this requirement is granted for good cause by the Counselor to the Governor.

With respect to fast-track regulations, the Department of Planning and Budget shall review the fast-track regulation to determine whether the regulatory change is appropriately within the intended scope of fast-track regulatory authority. Agencies shall report to DPB and the Governor's Policy Office all comments and or objections received with respect to a fast-track rulemaking.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

C. Final Regulation

After the agency has reviewed the comments received during the public comment period following publication of the proposed regulation and has revised the proposed regulation, as the agency deems necessary and proper, the agency shall prepare the final regulation package for submission to the Department of Planning and Budget.

The agency shall submit the final regulation to DPB after the close of the proposed regulation comment period as expeditiously as the subject matter will allow.

DPB shall review the final regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the regulatory action comports with the policy of the Commonwealth as set forth herein. In particular, DPB shall assess the effect of any

substantive changes made since the publication of the proposed regulation and the responsiveness of the agency to public comment. Within 14 days of receiving a complete final regulation package from the agency, the Director of DPB shall advise the Secretary and the Governor of DPB's determination.

The Attorney General's Office will also be requested to provide any appropriate comments for consideration by the Governor with respect to the final regulation. It is my intent that this process for feedback be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

After DPB's review, the final regulation shall be forwarded to the appropriate Secretary and the Governor. The Secretary shall make a recommendation to the Governor within seven days. The agency shall be authorized to submit the final regulation to the Registrar for publication if and when the Governor approves the final regulatory package for publication.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

D. Emergency Regulation

In addition to the information required on the background form, the agency shall also include in the regulatory package for any emergency regulation a memorandum from the Office of the Attorney General certifying that the agency has legal authority to promulgate the emergency regulation.

DPB shall review the emergency regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 14 days of receiving a complete emergency regulation package from the agency, the Director of DPB shall advise the Secretary of DPB's determination. The Secretary shall review the emergency regulation package within 14 days and forward a recommendation to the Governor. Upon receiving notification that the Governor has approved the emergency regulation package, the agency may then submit the emergency regulation package to the Registrar for publication.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

Periodic Review of Existing Regulations

Each existing regulation in the state shall be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor. The review shall ensure that each regulation complies with the principles set out in this Executive Order. In addition, each periodic review shall include an examination by the Office of the Attorney General to ensure statutory authority for the regulation and that the regulation does not exceed the authority to regulate granted in the enabling legislation. The periodic review of a regulation shall be reported on a form established by DPB. Such form shall minimally provide an opportunity for the agency to demonstrate the regulation's compliance with the policies set out in this Executive Order.

Agencies shall cooperate with reviews of regulations by the Office of the Attorney General, including but not limited to, reasonable requests for data and other supporting information as may be necessary to conduct the review.

Prior to the commencement date of the periodic review for a regulation, an agency shall post on the Town Hall a notice of the periodic review. The agency shall provide for a minimum of 21 days of public comment commencing on the posted date for the review. No later than 90 days after the close of the public comment period, the agency shall post a completed periodic review report on the Virginia Regulatory Town Hall.

When a regulation has undergone a comprehensive review as part of a regulatory action and when the agency has solicited public comment on the regulation, a periodic review shall not be required until four years after the effective date of this regulatory action.

The Governor may request a periodic review of a regulation at any time deemed appropriate. Such a request may outline specific areas to be addressed in the review. In the case of such a request, the agency shall follow the procedures for periodic review as established herein or such other procedures as may be stipulated by the Governor.

Petitions for Rulemaking

Agencies shall post petitions for rulemaking and written decisions to grant or deny the petitioner's request on the Virginia Regulatory Town Hall in accordance with the time frames established in Section 2.2-4007 of the Code of Virginia.

Waivers from Process Deadlines

Agencies shall file all regulatory actions in a timely manner. Agencies shall file all actions in as timely a manner as possible, and in all instances within 90 days of approval by the Governor unless a waiver of this requirement is granted. The Chief of Staff may waive the deadlines an agency must meet when submitting NOIRAs, proposed, and final regulatory packages. A waiver shall only be granted when an agency has demonstrated a compelling need for extending the deadlines set out herein. An agency shall submit a waiver request as soon as possible prior to the expiration of a deadline. Such requests shall be submitted on forms prepared by DPB.

Electronic Availability of Meeting Agenda and Minutes

Executive Branch agencies that promulgate regulations and keep minutes of regulatory meetings shall post such minutes of their public meetings on the Virginia Regulatory Town Hall in accordance with the time frames established in Section 2.2-3707.1 of the Code of Virginia. In addition, wherever feasible, agencies shall post the agenda for a public meeting on the Virginia Regulatory Town Hall at least seven days prior to the date of the meeting.

Electronic Availability of Guidance Documents

To the extent feasible, agencies shall make all guidance documents, as defined by Section 2.2-4001 of the Code of Virginia, available to the public on the Virginia Regulatory Town Hall. Any guidance document currently available in electronic format shall be posted on the Virginia Regulatory Town Hall. Any changes to a guidance document shall be reflected on the Virginia Regulatory Town Hall within 10 days of the change. The Counselor to the Governor may waive these requirements or extend these deadlines in cases where agencies have demonstrated a compelling need. An agency shall submit a waiver request as soon as possible prior to the expiration of the deadline. Such requests shall be submitted on forms prepared by DPB.

This Executive Order rescinds Executive Order Number Thirty-Six (2006). This Executive Order shall become effective upon its signing and shall remain in full force and effect until June 30, 2010, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 30th day of December, 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 108 (2010)

DESIGNATION OF STRENGTHENING COMMUNITIES FUND GRANT RECIPIENT

The American Recovery and Reinvestment Act of 2009 (ARRA) provided an opportunity for eligible applicants to seek grants from the Strengthening Communities Fund-State, Local, and Tribal Government Capacity Building Program (SCF) administered by the U.S. Department of Health and Human Services (HHS), Office of Community Services (OCF). Grantees use program funds to provide capacity building services to community- and faith-based nonprofit organizations that will help them better serve those in need and facilitate the participation of such organizations in the economic recovery.

The SCF funding announcement required that a state-level applicant for the grant funds must be designated by the State as an Authorized Entity through a statute, resolution or executive order. If such a document had not been signed or approved prior to the application due date, a letter from the executive officer could be submitted with the application and the requisite resolution, statute or executive order submitted before the start of the grant.

Virginia Community Capital (VCC), an innovative Community Development Financial Institution (CDFI) that the State established specifically to provide technical assistance and financial services to housing and community development ventures within the Commonwealth, requested designation as an Authorized Entity as part of its SCF grant application. Accordingly, in June 2009, I provided a letter to the Secretary of Health and Human Services designating VCC as the Authorized Entity for the purpose of applying for and administering SCF grant funds made available through ARRA. VCC recently received notice of the award of $250,000 in SCF program funds. To remain in compliance with the terms of the program and assure continued access to program funds, it is necessary to affirm the Authorized Entity designation through an Executive Order.

Designation of the Authorized Entity

Under the terms of the grant, VCC will be responsible for: 1) conducting programmatic and financial oversight of the SCF State, Local, and Tribal Government Capacity Building program grant award; 2) implementing the approved work plan; 3) participating in national evaluation studies; and 4) sending key staff to an annual grantee conference in Washington, D.C. Grant funding will enable VCC to accomplish program objectives through the provision of training and technical assistance services to secular and faith-based organizations. Training will focus on providing in-depth information to nonprofit organizations interested in becoming more active in the economic recovery by pursuing community economic development activities. Technical assistance will help nonprofits and localities build their internal capacity to participate in innovative community and economic development initiatives through one-on-one technical assistance and the creation of a peer-to-peer technical assistance network. Finally, the SCF grant will enable VCC to improve its internal capacity to assist faith- and community-based nonprofit organizations in those economically distressed areas of the Commonwealth where VCC has concentrated its resources and efforts.

Through its role in providing an infusion of $17 million in equity capital to VCC in 2005, the State was instrumental in transforming the organization into a community development corporation able to operate throughout the Commonwealth. VCC's activities have complemented and are expected to continue to complement State efforts addressing the needs of economically distressed communities. The Department of Housing and Community Development and other state agencies will continue to work with VCC in meeting the

obligations of the HHS grant. Continuation of this close and collaborative working relationship is further established through the participation of the Director of the Department of Housing and Community Development as a member of the VCC Board of Directors.

Therefore, in response to these circumstances and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby designate Virginia Community Capital as the Authorized Entity for the purpose of applying for and administering grant funds received from the American Recovery and Reinvestment Act (ARRA) of 2009, Strengthening Communities Fund–State, Local, and Tribal Government Capacity Building Program, administered by the U.S. Department of Health and Human Services (HHS), Office of Community Services.

This Executive Order shall be effective upon its signing and shall remain in full force and effect during the term of the grant unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 8th day of January, 2010.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 109 (2010)

WORKPLACE SAFETY AND EMPLOYEE HEALTH

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the laws of the Commonwealth, including but not limited to Title 2.2 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby reestablish and revise the Workplace Safety and Employee Health Initiative established under Executive Order Number Fifty-two (1999) and Executive Order Number Ninety-four (2005). This initiative will ensure a safe and healthy workplace for state employees, reduce the incidence of work-related accidents and illnesses occurring in state agencies, and assist employees in returning to work from both work-related and non-work related illnesses and injuries.

Injuries and illnesses cause considerable pain and hardship for employees and their families and hinder the effective operation of state agencies. Human resource, risk management and safety professionals report that many of these injuries and illnesses can be reduced or prevented. In addition, lost productivity for the employee and employer can be lessened by transitional employment and/or job modification.

Keeping our government workers safe, whole, healthy and, whenever possible, employed is the duty of every state agency. This can only be accomplished with the full commitment of agency management working in partnership with all employees. All state agencies have an important role to play not only in reducing work-related injuries but also in improving return-to-work services for all injured or ill employees.

All executive branch departments, agencies, and institutions of higher education shall:

- Cooperate with the Department of Human Resource Management State Employee Workers' Compensation Services (DHRM) by implementing initiatives to reduce work-related injuries and improve services to injured employees;
- Cooperate with DHRM and the Virginia Retirement System Virginia Sickness and Disability Program to establish return-to-work opportunities appropriate for the individual employee and agency;
- Ensure that job expectations are clearly defined in the employee work profile to include physical requirements;
- Submit the First Report of Injury to the State Employee Workers' Compensation Services within 10 days of the injury;
- Identify trends and the impact on the agency;
- Include in managers' performance expectations, when appropriate, goals to encourage a safer work environment and reduction in work-related and non-work related employee lost time;
- Evaluate and maintain the agency's return-to-work policy for both work-related and non-work related periods of disability;
- Evaluate the work-related injuries and illnesses that occurred in FY 2010 and each subsequent fiscal year in order to reestablish goals and strategies to reduce them, to enhance workplace safety, and for transitional duty;
- Evaluate the work-related and non-work related injuries and illnesses that occurred in FY 2010 and each subsequent fiscal year where employees were unable to return to work in a transitional and/or permanent capacity;
- Establish strategies and practices to reduce lost time and to support the safe resumption of work for state employees;
- Report by October 1st of each year to the Department of Human Resource Management on the agency's compliance with the provisions of this Executive Order.

In order to support agency Workplace Safety and Health initiatives and goals, the Virginia Retirement System and Department of Human Resource Management shall:

- Review agency annual reports;

- Provide training, consultation, and support for agency initiatives; and
- Report non-compliance with the provisions of this Executive Order, and report annually to the Governor on progress made in improving workplace safety and returning employees to work;
- Consult with the Virginia Retirement System as administrator for the Virginia Sickness and Disability Program with regard to the compliance outcomes and work collaboratively to support agency initiatives in safely returning employees to work.

This Executive Order rescinds and replaces Executive Order Number Ninety-four (2005), Workplace Safety and Employee Health, issued by Governor Mark R. Warner, on July 14, 2005.

This Executive Order shall be effective upon signing and shall remain in full force and effect until superseded or rescinded by further executive action.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 8th day of January, 2010.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 110 (2010)

ALLOCATION OF A PORTION OF THE COMMONWEALTH'S SHARE OF THE CALENDAR YEAR 2009 NATIONAL LIMITATION FOR QUALIFIED SCHOOL CONSTRUCTION BONDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355) was enacted on February 17, 2009 ("ARRA"). Section 3(a) of ARRA sets forth the purposes of ARRA, which include (i) preserving and creating jobs and promoting economic recovery, (ii) assisting those most impacted by the recession, (iii) investing in infrastructure that will provide long-term economic benefits, and (iv) stabilizing State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Section 1521(a), Title I, Division B of ARRA added Section 54F to the Internal Revenue Code of 1986, as amended (the "Tax Code"). Section 54F provides for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that are designed to bear no interest and may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions. Among the conditions for the valid issuance of QSCBs is the receipt of an award of the national limitation for the calendar year in which the QSCBs are to be issued.

Section 54F(c) creates a national limitation of $11 billion for each of calendar years 2009 and 2010. Section 54F(d)(1) requires the U.S. Secretary of the Treasury to make allocations to the States in proportion to the respective amounts each State is eligible to receive under Section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent federal fiscal year ending before the calendar year. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009) (the "Notice"), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is $191,077,000 (the "2009 Commonwealth Share").

Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by the state to issuers within the state. The Notice provides that eligible issuers of QSCBs include states, political subdivisions as defined for purposes of Section 103 of the Tax Code, large local educational agencies that are state or local governmental entities, certain "on-behalf-of" issuers and certain conduit financing issuers. Neither Virginia nor federal law provides any process for making allocations of the 2009 Commonwealth Share to eligible issuers.

Of the $191,077,000 2009 Commonwealth Share, Executive Order 90 (2009) allocated an amount to certain qualifying projects in certain localities that were on the First Priority Waiting List approved by the Virginia Board of Education. Since that time, additional net qualifying cost of $1,500,000 for the Lylburn Downing Middle School in the city of Lexington have been identified and additional projects totaling $37,489,989 have been added by the Board of Education to the First Priority Waiting List.

On October 14, 2009, I announced the availability of the remaining portion of the 2009 Commonwealth Share to local school divisions through a competitive evaluation process to finance energy efficiency improvements and renovations, as well as renewable energy projects for public school buildings. Working cooperatively, the Department of Education and Department of Mines, Minerals and Energy supervised an application process that concluded on November 12, 2009. Subsequently, each application and project has been evaluated against criteria including annual energy savings, project payback period, shovel readiness, and composite index.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby allocate to VPSA pursuant to Section 54F(d)(1) of the Tax Code a portion of the 2009 Commonwealth Share sufficient for VPSA to issue a face amount of QSCBs at one time or from time to time to

produce for each of the below-listed projects an amount of net sale proceeds up to the maximum amount of the qualifying costs specified below:

From the First Priority Waiting List:

Locality	Project	Maximum Net Sale Proceeds
Virginia Beach City	Great Neck Middle School	$7,500,000
Washington County	John Battle High School	$489,126
	Abingdon High School	$489,126
	Patrick Henry High School	$1,177,236
	Holston High School	$602,186
	Meadowview Elementary School	$1,491,288
	Wallace Middle School	$1,165,073
	Glade Spring Middle School	$1,596,000
	William N. Neff Center	$3,100,000
Hopewell City	Hopewell City High School	$7,500,000
Virginia Beach City	College Park Elementary School	$4,879,954
Lexington City	Lylburn Downing Middle School	$1,500,000
Montgomery County	New Price's Fork Elementary School	$7,500,000

From the Competitive Process:

Locality	Project	Maximum Sale Proceeds
Amelia County	Amelia County Public Schools	$1,205,379
Arlington County	Arlington Career Center	$3,331,022
Buena Vista	Parry McCluer	$510,000
Greene County	Greene County Technical Education Center	$212,275
	Nathanael Greene Elementary School	$354,739
	Ruckersville Elementary School	$348,318
	William Monroe High School	$1,223,377
	William Monroe Middle School	$287,170
Greensville County	Belfield Elementary School	$52,942
	Greensville County High School	$471,841
	Wyatt Middle School	$12,036
	Greensville Elementary School	$209,285
Hampton City	Division Wide Lighting Upgrade Initiative	$2,500,000
King William County	Acquinton Elementary School	$85,000
	Hamilton Holmes Middle School	$65,800
	King William High School	$62,500
	Cool Spring Primary School	$47,650
Lancaster County	Lancaster Middle School	$211,983
	Lancaster High School	$179,146
Lunenburg County	Central High School	$1,172,948
Martinsville City	Martinsville Middle School	$577,208
	Albert Harris Elementary School	$327,410
	Patrick Henry Elementary School	$146,131
Montgomery County	MCPS Energy Performance Contract	$9,389,331
Prince William County	Hylton High School	$1,918,591
	Benton Middle School	$476,836
	Sudley Elementary School	$131,856
	Marumsco Hills Elementary School	$189,422
	West Gate Elementary School	$33,000
	Vaughan Elementary School	$30,000
	Swans Creek Elementary School	$57,000
	Sinclair Elementary School	$24,000
	Signal Hill Elementary School	$60,000
	Potomac View Elementary School	$45,000

	Parkside Middle School	$117,750
	Occoquan Elementary School	$30,000
	Neabsco Elementary School	$42,750
	Minnieville Elementary School	$39,750
Prince William County	Kerrydale Elementary School	$35,625
	Samuel L. Gravely, Jr. Elementary School	$70,500
	Glenkirk Elementary School	$61,875
	Gar-Field Senior High School	$279,000
	Fannie W. Fitzgerald Elementary School	$78,750
	Cedar Point Elementary School	$36,750
	Brentsville District High School	$84,000
	Bennett Elementary School	$62,250
	Belmont Elementary School	$33,750
	Bel Air Elementary School	$39,750
	Ashland Elementary School	$72,750
	Alvey Elementary school	$61,500
	Parkside Middle School	$895,949
	Tyler Elementary School	$30,000
	Yorkshire Elementary School	$79,500
	Gainesville Middle School	$100,500
	Woodbridge Senior High School	$279,000
	Woodbridge Middle School	$93,750
	Mary Williams Elementary School	$62,250
	Victory Elementary School	$67,500
	Sudley Elementary School	$39,750
	Stonewall Jackson High School	$232,500
	Rosa Parks Elementary School	$60,750
	Rockledge Elementary School	$36,000
	Osbourn Park High School	$232,500
	Marumsco Hills Elementary School	$35,250
	Marsteller Middle School	$100,500
	Leesylvania Elementary School	$60,000
	Godwin Middle School	$92,250
	Forest Park High School	$206,250
	Ellis Elementary School	$26,250
	Coles Elementary School	$36,000
	Bull Run Middle School	$100,500
	Buckland Mills Elementary School	$66,750
	Bristow Run Elementary School	$62,250
	Beville Middle School	$100,500
	Benton Middle School	$100,500
	Battlefield Middle School	$206,250
	Potomac Middle School	$101,250
	Freedom High School	$207,000
Prince William County	Hylton High School	$554,000
	Stonewall Jackson High School	$394,000
	Osbourn Park High School	$373,000
	Gar-Field High School	$371,000
Roanoke City	Preston Park Elementary School	$152,182
	Morningside Elementary School	$337,758
	Westside Elementary School	$383,842
	Monterey Elementary School	$236,757
Shenandoah County	North Fork Middle School	$595,951
	Peter Muhlenberg Middle School	$664,321

	Central High School	$909,540
	Signal Knob Middle School	$601,543
	Sandy Hook Elementary School	$965,526
	Ashby Lee Elementary School	$930,664
	W. W. Robinson Elementary School	$1,120,575
	Triplett Business and Technical Institute	$574,639
	Strasburg High School	$429,379
	Stonewall Jackson High School	$510,858
Spotsylvania County	Courtland Elementary School	$680,000
	Chancellor Elementary School	$200,000
	Lee Hill Elementary School	$45,305
	Salem Elementary School	$45,035
	Battlefield Middle School	$650,000
	Career and Technical Center	$68,587
	Courtland High School	$92,445
	Spotsylvania High School	$126,110
	Massaponax High School	$126,110
	Battlefield Elementary School	$35,919
	Brock Road Elementary School	$46,616
	Courthouse Road Elementary School	$46,616
	Robert E. Lee Elementary School	$34,241
	Smith Station Elementary School	$47,088
	Courtland Elementary School	$40,795
	Battlefield Middle School	$56,998
	Chancellor Middle and High School	$172,729
	Thornburg Middle School	$66,699
Stafford County	Stafford County Public Schools	$1,100,000
	Rockhill Elementary School	$180,000
Virginia Beach City	College Park Elementary School	$4,879,954
Washington County	Abingdon, Holston, Patrick Henry & John S. Battle High Schools	$400,000
Westmoreland County	Washington & Lee High School	$1,975,369
York County	Grafton-Bethel Elementary School HVAC Project	$1,100,000

The Secretary/Treasurer of VPSA shall notify the Chief of Staff in writing of how much of the 2009 Commonwealth Share VPSA has used pursuant to this Executive Order within five business days following each VPSA issuance of the QSCBs contemplated hereby. I hereby authorize the Chief of Staff to provide certificates of compliance with Section 54F(c) of the Tax Code as may be requested by the VPSA.

This Executive Order shall be effective as of January 14, 2010, without any further act or filing and shall remain in force and effect so long as Section 54F shall remain in effect, unless sooner rescinded or amended by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of January, 2010.

/s/ Timothy M. Kaine
Governor

STATE AIR POLLUTION CONTROL BOARD

Fugitive Dust Petition for Rulemaking - Comment Period Extended

On December 21, 2009, a public comment period was announced in the Virginia Register of Regulations (26:8 VA.R. 929 December 21, 2009) on two petitions for rulemaking submitted to the State Air Pollution Control Board. The petitions requested amendments to 9VAC5-40 and 9VAC5-50 regarding fugitive dust emissions. At the State Air Pollution Control Board meeting on January 8, 2010, the board approved an extension of the public comment period on the petitions. The comment period now closes on February 10, 2010.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

January 11, 2010

Administrative Letter 2010-01

To: All Insurers Licensed to Write Accident and Sickness Insurance in Virginia, and all Health Services Plans and Health Maintenance Organizations Licensed in Virginia

Re: 14VAC5-190-10 et seq.: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers Notification of Additional Reporting Requirement for the 2010 Reporting Period

The purpose of this letter is to alert carriers to an additional category of coverage for which cost and utilization information must be reported to the State Corporation Commission ("Commission"), on Form MB-1, due on or before May 1, 2011. Carriers are responsible for making necessary adjustments to their data capturing systems to ensure that Form MB-1 accurately reflects cost and utilization data relating to this additional reporting category for the 2010 reporting period (calendar year).

In accordance with the provisions of § 38.2-3418.15 of the Code of Virginia, insurers, health services plans, and health maintenance organizations are required to offer and make available coverage for prosthetic devices and components. The requirements of this mandated offer apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in Virginia on and after January 1, 2010, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made. Carriers should review § 38.2-3418.15 of the Code of Virginia in its entirety for a complete description of the coverage requirements for this mandated offer.

Carriers are encouraged to review all requirements applicable to mandated benefits and mandated providers as well as the associated reporting requirements to determine the extent to which this new reporting requirement affects their organization and to ensure compliance with all existing mandated benefit and provider requirements.

In order to avoid confusion and to facilitate the capturing of appropriate data relating to the coverage requirement for prosthetic devices and components, the carrier is directed to consult the 2010 listing of CPT and ICD-9-CM codes.

Please refer any questions regarding this matter to: Mary Ann Mason, Senior Insurance Market Examiner, State Corporation Commission, Bureau of Insurance, Life and Health Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9348, FAX (804) 371-9944, or email maryann.mason@scc.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order - Bath County Service Authority

An enforcement action has been proposed for the Bath County Service Authority for alleged violations in Bath County. A proposed consent order describes a settlement to resolve certain permit violations including unauthorized discharges of solids at its Hot Springs Regional STP. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email (steven.hetrick@deq.virginia.gov), FAX (540) 574-7878 or postal mail (Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801), from February 1, 2010, to March 3, 2010.

Total Maximum Daily Load - Hunting Creek, Cameron Run, and Holmes Run

Announcement of a Total Maximum Daily Load (TMDL) study to restore water quality in the bacteria impaired waters of Hunting Creek, Cameron Run, and Holmes Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the third Technical Advisory Committee (TAC) Meeting for the Hunting Creek, Cameron Run, and Holmes Run Bacteria TMDL Studies.

TAC meeting: Friday, February 12, 2010, 10:30 a.m. - Noon, City of Alexandria's City Hall, Sister Cities Conference Room 1101, 301 King Street, Alexandria, VA 22314.

Meeting description: This is the third meeting of the TAC. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of Hunting Creek, Cameron Run, and Holmes Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of E. coli bacteria. Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. The Hunting Creek, Cameron Run, and Holmes Run watersheds are located within Arlington County, the City of Alexandria, the City of Falls Church, and Fairfax County. Below are descriptions of the impaired segments that will be addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Hunting Creek (Tidal)	Recreational use Impairment due to E. coli bacteria	0.53 square miles	Route 241 (Telegraph Road) Bridge Crossing	Confluence with the Potomac River
Cameron Run (Nontidal)	Recreational use Impairment due to E. coli bacteria	2.08 miles	Confluence with Backlick Run	Route 241 (Telegraph Road) Bridge Crossing
Holmes Run (Nontidal)	Recreational use Impairment due to E. coli bacteria	3.58 miles	Mouth of Lake Barcroft	Confluence with Backlick Run

During this study, DEQ will develop a total maximum daily load, or a TMDL, for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from February 12, 2010, until 9 a.m. on March 15, 2010. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email katie.conaway@deq.virginia.gov.

Proposed Consent Order - Shore Landvest, Inc. (dba Sunset Beach Resort)

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Northampton County, Virginia.

Public comment period: January 30, 2010, to March 3, 2010.

Consent order description: The State Water Control Board proposes to issue a consent order to Shore Landvest, Inc. (dba Sunset Beach Resort) to address alleged violations of Virginia Ground Water Management Act. The location where the alleged violations occurred is 32246 Lankford Highway, Cape Charles. The consent order describes a settlement to resolve the unpermitted withdrawal of ground water and failing to provide the information needed to complete a permit application.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests, and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email paul.smith@deq.virginia.gov.

Total Maximum Daily Load Study in Mattawoman Creek, Northampton County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Mattawoman Creek, located in Northampton County, on Wednesday, February 3, 2010.

The meeting will start at 6 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Mattawoman Creek (VAT-C14E-13) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the Shellfishing Use. The impairment is based on the shellfish harvesting condemnation of Growing Area 86 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL

Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 3, 2010, to March 5, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study in Lower Nansemond River, Suffolk

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Bleakhorn Creek, Knotts Creek, and Bennett Creek, located in the City of Suffolk, on Monday February 8, 2010.

The meeting will start at 6 p.m. in the Creekside Elementary School cafeteria, 1000 Bennetts Creek Park, Road, Suffolk, VA. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Bleakhorn Creek (VAT-G13E-10), Knotts Creek (VAT-G13E-11), and Bennett Creek (VAT-G13E-12) were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the Shellfishing Use. The impairment is based on the shellfish harvesting condemnation of Growing Area 46 (063-046A, B, and C Lower Nansemond River) imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 8, 2010, through March 10, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study in Sandy Bottom Branch and Tributary, Accomack County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Sandy Bottom Branch and tributary, located in Accomack County, on Wednesday, February 3, 2010.

The meeting will start at 6 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Sandy Bottom Branch (VAT-C10R-02) and its tributary (VAT-C10R-01) were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the Aquatic Life Use. The impairments are based on biological monitoring data of the stream's benthic community. Virginia agencies are working to identify the stressors that are affecting the benthic communities in these creeks.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL 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, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 3, 2010, to March 5, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jshowell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Studies in the Tidewater Regional Area

The Virginia Department of Environmental Quality will host a public meeting on water quality studies for several water bodies that are impaired due to not meeting dissolved oxygen (DO) water quality standards.

The meeting will be held on Monday February 22, 2010, and will start at 6 p.m. at the Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA. The purpose of the meeting is to provide information and discuss the studies with interested local community members and local government.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL 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, pollutant levels have to be reduced to the TMDL amount.

The waters listed below were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the Aquatic Life Use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for dissolved oxygen.

Albemarle Canal	(VAT-K41R_AAC01A06)
North Landing River-middle	(VAT-K41R_NLR02A06)
West Neck Creek-middle	(VAT-K41R_WNC01A00)
Milldam Creek-lower	(VAT-K41R_MLD02A06)
Nawney Creek-upper	(VAT-K42E_NWN01A00)
Nawney Creek-lower	(VAT-K42E_NWN02A00)

Several impaired segments were identified as needing an assessment to determine if natural conditions are the cause of the low DO values. If it is determined that anthropogenic causes contribute to the impairments, a TMDL will be developed for each waterbody listed below:

Tarrara Creek	(VAT-K13R_TRR01A00)
Mill Swamp	(VAT-K34R_MSW01A00)
Rattlesnake Swamp	(VAT-K34R_RKN01A02)
Seacock Swamp-upper	(VAT-K35R_SCK01A00)
Blackwater River-middle K36	(VAT-K36R_BLW02A08)
Blackwater River-middle K36	(VAT-K36R_BLW03A08)
Blackwater River-lower middle K36	(VAT-K36R_BLW04A08)
Blackwater River-lower K36	(VAT-K36R_BLW05A08)
Blackwater River-mouth K36	(VAT-K36R_BLW06A08)
Blackwater River-upper K33	(VAT-K33R_BLW01A00)
Blackwater River-lower K33	(VAT-K33R_BLW02A04)
Blackwater River-lower K33	(VAT-K33R_BLW03A08)

The public comment period on materials presented at this meeting will extend from February 22, 2010, to March 24, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jshowell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

VIRGINIA DEPARTMENT OF HEALTH

Drinking Water Construction

January 12, 2010

Drinking Water Construction Funding Meetings

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 15, 2010 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or fax at 804/864-7521. If you have any questions, please call Theresa Hewlett at 804/864-7501.

I (we) wish to attend the meeting indicated below: NOTE THAT THE CHESTERFIELD WORKSHOP IS IN THE AFTERNOON!!

☐	Danville	9:00 a.m.-12:00 p.m., Wednesday, February 17, 2010 at the Pittsylvania/Danville Health District's Auditorium, 326 Taylor Drive, Danville, VA.
☐	Abingdon	9:00 a.m.–12:00 p.m., Thursday, February 18, 2010 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA
☐	Chesterfield	1:00 p.m.-4:00 p.m., Monday, February 22, 2010 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA.
☐	Suffolk Area	9:00 a.m.-12:00 p.m., Tuesday, February 23, 2010 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
☐	Culpeper	9:00 a.m.-12:00 p.m., Wednesday, February 24, 2010 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA
☐	Lexington	9:00 a.m.-12:00 p.m., Thursday, February 25, 2010 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA

There will be _____ persons in my party as follows:

Name	Address	Phone	Representing

Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) is pleased to announce several opportunities for drinking water funding. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in following cycle. As described below, funding is made possible by our Drinking Water State Revolving Fund (DWSRF) Program. VDH anticipates having at least $20 million. Also the enclosed attachment describes the Water Supply Assistance Grant Fund Program. Our FY 2011 DWSRF Intended Use Plan will be developed using your input on these issues.

(1) 1452(k) Source Water Protection Initiatives - (5 pages) Must be postmarked by April 2, 2010. This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (1) community and non-profit noncommunity waterworks to acquire land/conservation easements and (2) community waterworks, only, to establish local, voluntary incentive-based protection measures.

(2) Construction Funds - (10 pages) Must be postmarked by April 2, 2010. Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A preliminary engineering report must be submitted if required by VDH. An instruction packet and construction project schedule are included.

(3) Set-Aside Suggestion Forms - (2 pages) Must be postmarked by April 2, 2010. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(4) Planning & Design Grants - (9 pages) Must be postmarked by August 27, 2010. Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to $30,000 per project for small, financially stressed, community waterworks serving fewer than 3,300 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

VDH's Program Design Manual describes the features of the above opportunities for funding. After receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed in August, the draft Intended Use Plan will describe specific details for use of the funds. A public meeting is planned for October and written comments will be accepted before a final version is submitted to the USEPA for approval.

You may request the applications, set-aside suggestion form, Program Design Manual and information from and forward any comments to Steve Pellei, P.E., FCAP Director, by writing or calling Virginia Department of Health, James Madison Building, Room 622, Richmond, VA 23219, telephone (804) 864-7489. The materials are also accessible on VDH's website http://www.vdh.virginia.gov/drinkingwater/financial.

Water Supply Assistance Grant Funding

The 1999 General Assembly created the Water Supply Assistance Grant Fund (WSAGF) in § 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water.

Funds are available by submitting an application postmarked on or before the dates indicated for the following:

(1) Planning Grants – Application must be postmarked by August 27, 2010. Of available funding, $60,000 or 16.67% will be used for planning needs. Your application cannot exceed this amount.

In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF funding purposes only, up to 50 extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include, but are not limited to, capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

(2) Surface Water Development or Improvement Grants – Application must be postmarked by April 2, 2010. Of available funding, $200,000 or 55.55% will be used for community waterworks surface source water development or improvement activities. Your application cannot exceed this amount.

The applicant submits the current VDH construction application to VDH. In ranking of applications, preference is

given to those that address problems of small, community waterworks with multi-jurisdictional support.

Eligible activities may include land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Small Project Construction Grants – Application must be postmarked by April 2, 2010. Of available funding, $100,000 or 27.78% will be used for small project construction that is defined as a project whose total project cost does not exceed $50,000. Eligible activities may include, but are not limited to, upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF purposes only, up to 30 extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/SDWA compliance projects are funded before any other eligible project.

VDH's WSAGF Program Guidelines describe the features of the above opportunities for funding.

You may request the applications or Program Guidelines from us by writing or calling Virginia Department of Health, James Madison Building, Room 622, Richmond, VA 23219, telephone (804) 864-7489. The applications are also accessible on VDH's website www.vdh.virginia.gov/drinkingwater/financial.

DEPARTMENT OF JUVENILE JUSTICE

Public Hearing on Three Regulations: 6VAC35-41, 6VAC35-71, and 6VAC35-101

The Department (Board) of Juvenile Justice will hold a public hearing for persons wishing to bring concerns, questions, or suggestions regarding the following regulations:

6VAC35-41, Regulation Governing Juvenile Group Homes and Halfway Houses

6VAC35-71, Regulation Governing Juvenile Correctional Centers

6VAC35-101, Regulation Governing Juvenile Secure Detention Centers

The first session will be held on Tuesday, April 6, 2010, from 7 p.m. to 9 p.m. at the General Assembly Building at 9th & Broad Streets, Richmond, VA. Also, on Wednesday, April 7, 2010, the board will allow for additional public comments during its regularly scheduled meeting which begins at 10 a.m. at the Department's Central Office building at 700 Centre, 700 E. Franklin Street, Richmond, VA, Second Floor Conference Room.

All comments should be submitted to Deborah C. Hayes no later than Friday, April 2, 2010, at 700 E. Franklin Street, Richmond, VA, or you may bring 15 copies of your comments with you to the hearing.

Contact Information: Janet P. Van Cuyk, Regulatory Coordinator, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 6, 2010, and January 12, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number One (10)

"Megapower" Virginia Lottery Retailer Incentive Program Rules (effective 1/12/10)

Director's Order Number Two (10)

"Subscriptions Movie Fun Pack Sweepstakes" Final Rules for Game Operation (effective 1/6/10)

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at http://register.dls.virginia.gov/cumultab.htm.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the

Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.**

Publication: 26:6 VA.R. 570-591 November 23, 2009.

Correction to Final Regulation:

Page 571, 9VAC25-630-10, definition of "Permittee," beginning on line 1, strike "whose confined poultry feeding operation is"

Page 571, 9VAC25-630-10, definition of "Poultry waste broker" or "broker" as follows:

beginning on line 1, strike ", other than the poultry grower,"

line 2, strike "more than 10 tons of"

line 3, strike "in any 365-day period"

line 5, strike "some or all of the"

VA.R. Doc. No. R08-1062; Filed January 22, 2010, 3:12 p.m.

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Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Publication: 26:10 VA.R. 1321-1329 January 18, 2010.

Correction to Final Regulation:

Page 1329, 9VAC25-720-50 C, NOTE (10), end of paragraph, change "paragraph (c)" to "clause (c)"

VA.R. Doc. No. R07-128; Filed January 21, 2010, 11:30 a.m.