VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

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.

A 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 18 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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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.dls.virginia.gov).

August 2013 through August 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 **(Tuesday)**	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 **(Monday)**	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
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30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Donna Pillatsch.

Nature of Petitioner's Request: Adopt some other way for nondirect care RNs to retain their license without having to focus on direct care skills. Suggest the board consider implementing easily achievable competency requirements for those RNs who are working in insurance companies, legal departments, utilization management, and other nondirect care professions.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the regulations was posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov and filed with the Register of Regulations for publication on August 26, 2013. Comment on the petition from interested parties is requested until September 25, 2013.

Public Comment Deadline: September 25, 2013.

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

VA.R. Doc. No. R13-38; Filed July 30, 2013, 9:07 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Notice of Intended Regulatory Action - Extension of Public Comment Deadline

EDITOR'S NOTICE: The Department of Forestry has extended the public comment deadline until August 31, 2013, for the Notice of Intended Regulatory Action previously published in 29:23 VA.R. 2732 July 15, 2013. The notice is republished below.

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Forestry intends to consider amending **4VAC10-30, Virginia State Forests Regulations.** The purpose of the proposed action is to (i) ensure that the regulations represent the current uses of state forests, (ii) ensure a safe environment for the public, and (iii) provide a meaningful recreational experience for users, in concert with the normal operational business practices of the state forests.

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

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

Public Comment Deadline: August 31, 2013.

Agency Contact: Ronald S. Jenkins, Administrative Officer, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

VA.R. Doc. No. R13-3756; Filed August 13, 2013, 10:21 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to amend **8VAC20-90, Procedure for Adjusting Grievances.** The purpose of the proposed action is to (i) conduct a comprehensive review of the entire chapter, which was last amended effective May 2, 2005, and (ii) revise the regulation to reflect Chapters 588 and 650 of the 2013 Acts of Assembly.

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

Statutory Authority: §§ 22.1-16 and 22.1-308 of the Code of Virginia.

Public Comment Deadline: September 25, 2013.

Agency Contact: Patty Pitts, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

VA.R. Doc. No. R13-3790; Filed July 31, 2013, 2:14 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Proposed Regulation

Title of Regulation: **1VAC30-46. Accreditation for Commercial Environmental Laboratories (amending 1VAC30-46-10, 1VAC30-46-30 through 1VAC30-46-150, 1VAC30-46-200, 1VAC30-46-210; adding 1VAC30-46-15, 1VAC30-46-95, 1VAC30-46-220).**

Statutory Authority: § 2.2-1105 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 25, 2013.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Basis: Section 2.2-1102 A 1 of the Code of Virginia authorizes the Department of General Services to prescribe regulations necessary or incidental to the performance of the department's duties or execution of powers conferred by the Code of Virginia.

Section 2.2-1105 A of the Code of Virginia authorizes the Division of Consolidated Laboratory Services (DCLS) to establish and conduct a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia (regarding air pollution control), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Section 2.2-1105 C of the Code of Virginia authorizes DCLS to establish a fee system to pay for the costs of the certification program.

The promulgating entity for this regulation is the Division of Consolidated Laboratory Services of the Department of General Services (DGS).

Purpose: Environmental laboratories are required by § 2.2-1105 of the Code of Virginia to be accredited before submitting data to the Department of Environmental Quality (DEQ) under Virginia's air, water, and waste laws and regulations. This statutory requirement is carried out by DCLS under the regulatory requirements of 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) and 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

DCLS accredits commercial laboratories (1VAC30-46) using the national environmental laboratory accreditation standards developed by The NELAC Institute (TNI). The TNI program standards are the only national standards developed for the accreditation of environmental laboratories. TNI periodically revises its standards to improve them and to provide the most up-to-date information available for the accreditation of environmental laboratories. DCLS currently accredits commercial environmental laboratories using the 2003 NELAC Standards. TNI replaced these standards with the 2009 standards and published the new standards in July 2010. To maintain its status as a TNI accreditation body and to continue to accredit commercial environmental laboratories under the TNI program, DCLS must incorporate the 2009 TNI Standards into 1VAC30-46.

Accrediting commercial environmental laboratories to a single set of standards has several benefits. Accreditation promotes continuous quality improvement. Accreditation gives confidence that work is performed properly and to a known standard. Under the accreditation program, assurance is provided that all environmental laboratories meet the same proficiency testing and quality assurance and quality control standards. Meeting these standards ensures that the laboratories have the ability to produce environmental test data of known quality and defensibility for levels of pollutants in environmental samples. The limits set by DEQ for air, water, and waste pollutants help protect the environment and public health. Laboratory measurements of environmental samples determine compliance with Virginia's environmental laws and therefore are the key to providing protection of public health and welfare. Accrediting laboratories to one standard reduces the uncertainties associated with decisions made by the regulatory agencies that affect the protection of human health and the environment.

Failure to update the regulation to the TNI 2009 standard may jeopardize the Virginia commercial laboratories' accreditation. In order to maintain accreditation in TNI, laboratories must adhere to the current standard. TNI-accredited Virginia commercial laboratories can easily obtain secondary accreditation in other states that utilize the TNI program to accredit laboratories. Failure to update the regulation to the TNI 2009 standard will jeopardize this commercial option for these laboratories.

Current fees charged under the program are insufficient to support the program as required by § 2.2-1105 C of the Code of Virginia. The current fees are inadequate for three reasons. First, the fees were set initially using an estimate of the number of laboratories to be accredited that was too high.

Second, the program fees were established in 2004 and do not account for inflation in the intervening years. Third, the fee structure does not take into account the variety and amount of testing done by the laboratories that DCLS accredits.

The original estimate of laboratories that would be covered by the program was based on limited information provided by DEQ and other sources. Using this information, DCLS estimated the number of in-house and commercial laboratories that were serving DEQ permit holders. This estimate proved to be too high and the resulting fees, based on these estimates, are too low. The revised fees are based on the number of laboratories currently accredited under the program.

The current fee provisions do not include a factor for inflation. The fees were proposed in 2004 in regulations that did not become final until 2009. The cost of living has increased by approximately 20% since 2004. The revised fees have been adjusted to account for this increase in the cost of living. The revised fee provisions also include a provision to allow DCLS to adjust the fees annually for changes in the cost of living.

The current fee provisions do not take into account the range of testing and the variety of testing done by the accredited laboratories. This results in fees that do not mirror the scope of the laboratory testing. The work performed by DCLS to accredit a laboratory is directly related to the number of test methods performed and the number of matrices tested by the laboratory. The revised fee structure accounts for these differences. The revised fees are adjusted in proportion to the number of test methods a laboratory performs and for the number of matrices tested.

The agency has gained operational experience through accrediting laboratories since January 2009. The proposed action revises the procedures used to accredit the laboratories, eliminating provisions that no longer apply and revising some provisions to make the program more efficient. This includes the addition of procedures to suspend laboratory accreditation. Suspension is a benefit to the laboratory that may otherwise have its accreditation withdrawn.

Substance: The proposed action requires laboratories accredited under this chapter to meet the 2009 TNI Standards instead of the 2003 NELAC Standards. The 2009 TNI Standards are incorporated by reference into Part II of the regulation. Provisions from the 2003 NELAC Standards that are currently included in Part I of 1VAC30-46 (General Provisions) have been revised or dropped entirely to meet the 2009 TNI Standards. This includes the definitions in 1VAC30-46-40.

The proposed action revises the definition of "environmental analysis" to include two exceptions that DCLS has previously made through guidance in consultation with DEQ.

The proposed action deletes the procedures pertinent to the initial accreditation period. The initial accreditation period was established in 1VAC30-46 as the period of January 1, 2009, to January 1, 2012. During this time, DCLS accredited environmental laboratories for the first time. Because DCLS has completed the initial accreditation of commercial environmental laboratories, these provisions no longer apply.

The proposed action deletes the renewal procedure that required laboratories to file an application for renewal every other year. Renewal can be efficiently done without an additional application process.

The proposed action adds 1VAC30-46-95. This section sets out the procedures used to suspend laboratory accreditation in part or in total. Suspension provides the laboratory an opportunity to correct a problem that would ordinarily cause the agency to withdraw accreditation from the laboratory. DCLS also may provide extra time under these provisions for a lab to correct deficiencies before suspension occurs.

The proposed action revises the procedures to deny or withdraw accreditation. The notification procedures are revised to be more explicit. The proposed action revises the provisions on the appeal process. The provisions are simplified, referring only to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

The proposed action replaces the current fee system with one that reflects the current costs of accrediting commercial environmental laboratories. The revised fees account for inflation since 2004. Revised 1VAC30-46-150 charges fees that represent more closely the cost of accrediting each laboratory. These fees take into account the number of test methods and the number of matrices for which the laboratory seeks or maintains accreditation. The agency accreditation workload is directly proportional to the number of methods and matrices to be accredited.

The proposed action adds provisions on applications for primary accreditation from out-of-state laboratories. The current regulation does not address these applications adequately.

Issues: There are two primary advantages to the public associated with this proposed action. The first advantage to the public is the maintenance of up-to-date standards governing the accreditation of commercial environmental laboratories. The 2009 TNI Standards are the most current version of these national accreditation standards for environmental laboratories and improve the 2003 NELAC Standards currently used by DCLS to accredit these laboratories. Accrediting environmental laboratories benefits the public because it ensures that the laboratories can produce environmental data of known quality and defensibility. DEQ uses these environmental data to determine compliance with environmental standards that protect the public health and welfare. The second advantage is for DEQ permit holders who contract with the commercial laboratories to analyze environmental samples. The permit holders are assured of the quality of the laboratories' analyses. There are no disadvantages to the public.

There are three primary reasons this action is necessary for DCLS and the Commonwealth. First, TNI requires accreditation bodies to use the latest TNI standards to accredit environmental laboratories. This proposed action is necessary for DCLS to meet that requirement. Second, the revisions to 1VAC30-46 reduce the program's administrative requirements and make it more efficient. Third, DCLS will be able to charge fees that cover the cost of the accreditation program. There are no disadvantages to the agency or Commonwealth.

There are also advantages for the environmental laboratories accredited under 1VAC30-46. By meeting the 2009 TNI Standards, the laboratories will continue to be recognized as TNI-accredited laboratories. This enables the Virginia commercial laboratories to quickly obtain secondary accreditation from other TNI-approved accreditation bodies so that they can provide laboratory services as accredited laboratories in these other states.

The primary disadvantage of the proposed action for the affected laboratories is the increase in fees. The fee structure is revised to more closely charge for the actual cost to the agency. The fees are increased generally and will be charged annually rather than every other year.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of General Services (DGS) proposes to replace the 2003 NELAC[1] Institute (TNI) standards used to accredit commercial environmental laboratories with the more up-to-date 2009 TNI standards. Additionally, the Department proposes to: 1) increase fees, 2) tie future fees to inflation, 3) no longer require that accredited laboratories reapply for accreditation by filling out an application for renewal of accreditation every other year, 4) eliminate obsolete language, and 5) amend other text for clarity.

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

Estimated Economic Impact. Environmental laboratories are required by 2.2-1105 of the Code of Virginia to be accredited before submitting data to the Department of Environmental Quality (DEQ) under Virginia's air, water, and waste laws and regulations. This statutory requirement is carried out by DGS under the regulatory requirements of 1 VAC 30-45 (noncommercial laboratories) and 1 VAC 30-46 (commercial laboratories).

DGS accredits commercial laboratories (1VAC30-46) using the national environmental laboratory accreditation standards developed by TNI. The TNI program standards are the only national standards developed for the accreditation of environmental laboratories. TNI periodically revises their standards to improve them and to provide the most up-to-date information available for the accreditation of environmental laboratories. DGS currently accredits commercial environmental laboratories using the 2003 NELAC Standards. TNI replaced these standards with the 2009 and published the new standards in July 2010. To maintain its status as a TNI accreditation body and to continue to accredit commercial environmental laboratories under the TNI program, DGS must incorporate the 2009 TNI Standards into 1VAC30-46.

Accrediting commercial environmental laboratories to a single set of standards has several benefits. Accreditation promotes continuous quality improvement. Accreditation gives confidence that work is performed properly and to a known standard. Under the accreditation program, assurance is provided that all environmental laboratories meet the same proficiency testing and quality assurance and quality control standards. Meeting these standards ensures that the laboratories have the ability to produce environmental test data of known quality and defensibility for levels of pollutants in environmental samples. The limits set by DEQ for air, water, and waste pollutants help protect our environment and public health. Laboratory measurements of environmental samples determine compliance with Virginia's environmental laws and therefore are the key to providing protection of public health and welfare. Accrediting laboratories to one standard reduces the uncertainties associated with decisions made by the regulatory agencies that affect the protection of human health and the environment.

Failure to update the regulation to the TNI 2009 standard may jeopardize the Virginia commercial laboratories' accreditation status for work in other states. In order to maintain accreditation in TNI, laboratories must adhere to the current standard. TNI-accredited Virginia commercial laboratories can easily obtain secondary accreditation in other states that utilize the TNI program to accredit laboratories. Failure to update the regulation to the TNI 2009 standard will jeopardize this commercial option for these laboratories. Thus, DGS's proposal to update the regulation to the TNI 2009 standard should create a net benefit.

According to DGS, the current fees charged under the program are insufficient to support the program as required by § 2.2-1105 C of the Code of Virginia. The current fees have been inadequate for three reasons. First the fees were set initially using an estimate of the number of laboratories to be accredited that was too high. Second the program fees were established in 2004 and have not accounted for inflation in the intervening years. Third the fee structure does not take into account the variety and amount of testing done by the laboratories DGS accredits.

DGS states that the original estimate of laboratories that would be covered by the program was based on limited information provided by DEQ and other sources. Using this information, DGS estimated the number of in-house and commercial laboratories that were serving DEQ permit

holders. This estimate proved to be too high and the resulting fees, based on these estimates, are too low. The proposed fees are based on the number of laboratories currently accredited under the program.

The current fee provisions do not include a factor for inflation. The fees were proposed in 2004 in regulations that did not become final until 2009. From calendar year 2004 to calendar 2011 the most commonly used measure of the cost of living (Consumer Price Index - All Urban Consumers) rose by 19.1 percent. Prices have continued to rise in 2012.

The current fee provisions do not take into account the range of testing and the variety of testing done by the accredited laboratories. This results in fees that do not mirror the scope of the laboratory testing. The work performed by DGS to accredit a laboratory is directly related to the number of test methods performed and the number of matrices tested by the laboratory. The revised fee structure accounts for these differences. The revised fees are adjusted in proportion to the number of test methods a laboratory performs and for the number of matrices tested.

DGS proposes to increase fees to account for the three sources of higher costs per lab mentioned above. Failing another source of funding for DGS accreditation program, the higher fees do appear to be necessary. Looking for increased efficiency of operations, which if found, could potentially reduce the extent of the proposed fee increases is beyond the scope of this analysis.

The department projects the following range of fee increases for currently accredited laboratories: 1) Thirty-seven percent will see a fee increase of 7-59%. Most are Virginia labs. 2) Thirty-four percent will see a fee increase of 60-98%. All are located out-of-state with one exception. 3) Twenty-six percent will see a fee increase of 100-194%. All are located out-of-state with the exception of six Virginia labs. 4) Three percent will see a fee increase of over 200%. These are out-of-state labs.

DGS also proposes to have fees automatically adjust annually based on changes in the Consumer Price Index. When an agency just passes on whatever their costs increases are in the form of higher fees to the regulated community, the agency has limited incentive to spend dollars efficiently. On the other hand, when revenue is not tied to how they spend their dollars, i.e. with future fees based on CPI, then the agency has the incentive get more for the dollars they will have. For example, say it is moderately more convenient to get supplies from supplier X than from supplier Y, but it costs more. When whatever costs may be are passed on to the regulated community, then the agency will likely go for convenience. If the fees are not directly tied to costs, i.e. with the CPI fee change method, then the agency has more incentive to get the most for the dollars they spend since inefficient spending will not increase revenue.

Additionally, DGS proposes to eliminate the renewal procedure that requires laboratories to file an application for renewal every other year. Renewal can be efficiently done without an additional application process. The department estimates that this will save laboratory staff approximately half a day of effort. Eliminating unnecessary administrative work clearly creates a net benefit.

Businesses and Entities Affected. The proposed amendments affect 118 laboratories currently accredited under 1VAC30-46 (as of 6/23/12). Four are local government laboratories, one is a federal laboratory, three are laboratories owned by industrial companies, and 110 are commercial laboratories.

The three industrial labs are part of large industrial companies. Sixty-five of the 110 commercial labs (59%) can be classified as small businesses. Forty-five commercial labs (41%) are considerably larger and are representative of the largest environmental laboratories in the U.S, including 12 of the top 20 revenue producing commercial environmental labs in the U.S. DGS accredits multiple locations of these laboratories.

Eighty-one labs (69%) are located out-of-state. Of these, 32 are small businesses, one is an industrial lab, and the remaining 48 are large labs. Thirty-seven labs (31%) are located in Virginia. Of these, 25 are small businesses, five are government labs, two are industrial company labs, and the remaining five are large labs. Three of these are individual locations for large laboratory concerns.

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

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

Effects on the Use and Value of Private Property. Looked at in isolation, the proposed increased fees will have a slight negative impact on the value of commercial environmental labs. If we assume that the fee increases are necessary to maintain the accreditation program, then that would not likely be the case.

Small Businesses: Costs and Other Effects. The proposed increased fees will have a slight negative impact on the value of commercial environmental labs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. If we assume that there is no alternative funding method for the accreditation program, then there is no apparent alternative method that will reduce the impact of the fee increases on the small commercial labs.

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 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation

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

[1] NELAC: National Environmental Laboratory Accreditation Conference

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

Summary:

The proposed regulatory action (i) replaces the 2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards used to accredit commercial environmental laboratories with the 2009 The NELAC Institute (TNI) Standards; (ii) restructures and increases fees, (iii) ties future fees to inflation, (iv) revises the process used to accredit laboratories, eliminating requirements relating to the initial accreditation period and streamlining the process to renew accreditation; (v) adds a provision on suspension of accreditation; and (vi) eliminates obsolete language and amends text for clarity.

Part I
General Provisions

1VAC30-46-10. Purpose.

Section 2.2-1105 of the Code of Virginia directs the Division of Consolidated Laboratory Services to establish a program to certify environmental laboratories that perform tests, analyses, measurements or monitoring required pursuant to the Commonwealth's air, waste and water laws and regulations. This chapter sets out the required standards and the process by which owners of commercial environmental laboratories may obtain certification for their laboratories. Certification is referred to as accreditation in this chapter. ~~Commercial environmental laboratories are accredited under the standards of the National Environmental Laboratory Accreditation Conference (NELAC) as approved in 2003. In addition, this chapter sets out the process that NELAP accredited environmental laboratories must use to receive accreditation in Virginia. 1VAC30-45 covers noncommercial environmental laboratories.~~

1VAC30-46-15. Standards for accreditation transition.

A. Commercial environmental laboratories are accredited under the standards of the National Environmental Laboratory Accreditation Conference (NELAC), now The NELAC Institute (TNI).

B. DCLS shall accredit commercial environmental laboratories under the 2003 NELAC Standards through June 30, 2014, as specified by the provisions of this chapter that became effective on January 1, 2009.

C. DCLS shall accredit commercial environmental laboratories under the 2009 TNI Standards beginning on July 1, 2014, as specified by the provisions of this chapter effective on (insert effective date).

1VAC30-46-30. Applicability.

A. General applicability. This chapter applies to the following:

1. Any owner of a commercial environmental laboratory.

2. Any owner of an environmental laboratory holding ~~NELAP~~ TNI accreditation from a primary ~~accrediting authority~~ accreditation body who wishes to apply for ~~reciprocal~~ secondary accreditation under 1VAC30-46-140.

~~B. DGS-DCLS.~~

~~1. NELAP accredited laboratory. DGS-DCLS shall meet the requirements of this chapter through review and accreditation by a NELAP accredited federal or state accrediting authority. This process shall be completed before January 1, 2012.~~

~~2. Primary accrediting authority. DGS-DCLS shall meet the requirements of the NELAC standards to become the primary accrediting authority for the Commonwealth of Virginia. This review and approval by a NELAP accrediting team shall be completed no later than January 1, 2010.~~

B. Acquiring primary TNI accreditation through this chapter.

1. A commercial environmental laboratory located in Virginia shall obtain primary TNI accreditation in Virginia as long as the fields of accreditation for which the laboratory seeks accreditation are offered by DCLS.

2. DLCS shall not provide primary TNI accreditation for environmental laboratories located in other states that offer TNI accreditation.

C. Voluntary accreditation. Any owner of ~~an~~ a noncommercial environmental laboratory may apply for accreditation under this chapter.

D. ~~Environmental laboratories required to obtain drinking water certification under 1VAC30-40.~~ Drinking water laboratory certification. ~~Any owner of an environmental laboratory~~ An owner of a laboratory who must meet the

requirements of 1VAC30-40 pertaining to drinking water laboratory certification and either 1VAC30-45 or this chapter may meet those requirements by obtaining accreditation under this chapter.

1VAC30-46-40. Definitions.

A. The definitions contained in ~~the 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards, Chapter 1, Appendix A – Glossary,~~ the 2009 TNI Standards are incorporated by reference into this section. Some of ~~the~~ these definitions ~~from this glossary~~ are included in this section because the terms are used throughout this chapter. ~~Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities.~~

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

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Accreditation" means the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory. "Accreditation" is the term used as a substitute for the term "certification" under this chapter.

"Accreditation body" or "AB" means the authoritative body that performs accreditation.

~~"Accrediting authority" means the territorial, state, or federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation.~~

~~"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.~~

"Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria (i.e., the standards and requirements of laboratory accreditation).

"Assessor" means the person ~~who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which accreditation has been requested~~ assigned by DCLS to perform, alone or as part of an assessment team, an assessment of an environmental laboratory.

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

~~"DGS-DCLS"~~ "DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§ 10.1-1300 et seq., § 10.1-1400 et seq., and § 62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required pursuant to the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of water, solid and chemical materials, biological tissue, or air and emissions.

2. Field testing and measurement of water, solid and chemical materials, biological tissue, or air and emissions, except when performed in an environmental laboratory rather than at the site where the sample was taken.

3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.

4. Protocols used pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.

5. Geochemical and permeability testing for solid waste compliance.

6. Materials specification for air quality compliance when product certifications specify the data required by an air permit such as fuel type, Btu content, sulfur content, or volatile organic chemical (VOC) content.

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.

"Establishment date" means the date set for the accreditation program under this chapter and the certification program under 1VAC30-45 to be established.

"Establishment of accreditation program" or "established program" means that ~~DGS DCLS~~ DCLS has completed the initial accreditation of environmental laboratories covered by this chapter and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of accreditation" means ~~an approach to accrediting laboratories by~~ those matrix, technology/method, and ~~analyte/analyte group~~ analyte combinations for which DCLS offers accreditation.

"Field of accreditation matrix" means the following when accrediting a laboratory:

1. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

2. Nonpotable water. Any aqueous sample excluded from the definition of drinking water matrix. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.

3. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

4. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin, i.e., by species.

5. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Field of proficiency testing" or "FoPT" means ~~an approach to offer proficiency testing by~~ analytes for which a laboratory is required to successfully analyze a PT sample in order to obtain or maintain accreditation, collectively defined as: matrix, technology/method, and ~~analyte/analyte group~~ analyte.

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or

2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means ~~a conclusion reached during an on-site assessment that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition~~ an assessment conclusion referenced to a laboratory accreditation standard and supported by objective evidence that identifies a deviation from a laboratory accreditation standard requirement.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time" ~~(or maximum allowable holding time)~~" means the maximum time that ~~a sample may be held prior to analysis and still be considered valid or not compromised~~ can elapse between two specified activities.

~~"Initial accreditation period" means the period during which DGS DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-46-70.~~

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

"Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.

"Matrix" means the ~~component or~~ substrate ~~that contains the analyte of interest~~ of a test sample.

~~"National accreditation database" means the publicly accessible database listing the accreditation status of all laboratories participating in NELAP.~~

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. ~~A subset of NELAP.~~

~~"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.~~

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.

2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:

a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner of a small wastewater treatment system treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.

b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a wastewater treatment system or a waterworks.

c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process or to confirm the identity or characteristics of material supplied by a potential or existing customer or generator as required by a hazardous waste management permit under 9VAC20-60.

d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.

e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" means any person who owns, operates, leases or controls an environmental laboratory.

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

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31 including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a POTW; or any reporting requirements imposed by the owner of a POTW or by the regulations of the State Water Control Board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary ~~accrediting authority~~ accreditation body" or "primary AB" means the ~~agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation~~ accreditation body responsible for assessing a laboratory's total quality system, on-site assessment, and PT performance tracking for fields of accreditation.

~~"Proficiency test or testing (PT)"~~ "Proficiency test," "proficiency testing," or "PT" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

"Proficiency test ~~(PT)~~ sample" or "PT sample" means a sample, the composition of which is unknown to ~~both the analyst and~~ the laboratory~~,~~ and is provided to test whether the ~~analyst or laboratory or both~~ laboratory can produce analytical results within specified acceptance criteria.

"Proficiency testing ~~(PT)~~ program" or "PT program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

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

"Quality assurance" or "QA" means an integrated system of management activities involving planning, ~~quality control, quality~~ implementation, assessment, reporting, and quality improvement to ensure that a ~~product~~ process, item, or service ~~meets defined standards of quality with a stated level of confidence~~ is of the type and quality needed and expected by the client.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the technical ~~director~~ manager.

"Quality control" or "QC" means the (i) overall system of technical activities ~~whose purpose is to measure and control the quality of a product or service so that it meets the needs of users~~ that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established by the customer; (ii) operational techniques and activities that are used to fulfill requirements for quality; and (iii) system of activities and checks used to ensure that measurement systems are maintained within prescribed limits, providing protection against "out of control" conditions and ensuring that the results are of acceptable quality.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control activities.

"Quality system matrix," for purposes of batch and quality control requirements, means the following:

~~1. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.~~

~~2. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.~~

~~3. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.~~

~~4. Non-aqueous liquid. Any organic liquid with less than 15% settleable solids.~~

~~5. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.~~

~~6. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.~~

~~7. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.~~

~~8. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.~~

1. Air and emissions. Whole gas or vapor samples, including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter, or other device.

2. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

3. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

4. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.

5. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

6. Non-aqueous liquid. Any organic liquid with less than 15% settleable solids.

7. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.

8. Solids. Includes soils, sediments, sludges, and other matrices with more than 15% settleable solids.

~~"Recognition" means the mutual agreement of two or more accrediting authorities to accept each other's findings regarding the ability of environmental laboratories to meet NELAC standards.~~

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.

2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.

3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental laboratory.

4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this

definition provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the laboratory, and the designation is submitted to ~~DGS-DCLS~~ DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§ 21-141 et seq.) through 5 (§ 21-291 et seq.) of Title 21 of the Code of Virginia.

"Secondary accreditation body" or "secondary AB" means the accreditation body that grants TNI accreditation to laboratories based on their accreditation by a TNI-recognized primary accreditation body.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Standard operating procedure" or "SOP" ~~(SOP)"~~ means a written document ~~which details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted~~ that details the method for an operation, analysis, or action with thoroughly prescribed techniques and steps. An SOP is officially approved as the method for performing certain routine or repetitive tasks.

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Technical ~~director~~ manager (however named)" means the person who has overall responsibility for the technical operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical ~~director~~ manager, laboratory supervisor, or laboratory manager.

"Technology" means a specific arrangement of analytical instruments, detection systems, or preparation techniques, or any combination of these elements.

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC5), including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for performing a specific measurement, as documented in a laboratory standard operating procedure or as published by a recognized authority.

"The NELAC Institute (TNI)" or "TNI" means the organization whose standards environmental laboratories must meet to be accredited in Virginia.

"TNI standards" means the 2009 Standards for Environmental Laboratories and Accreditation Bodies approved by TNI.

~~"U.S. Environmental Protection Agency (U.S. EPA or EPA)" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.~~

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia ~~which~~ that is titled "Air Pollution Control Board."

"Virginia Environmental Laboratory Accreditation Program" or "VELAP" means the program DCLS operates to accredit environmental laboratories under this chapter.

"Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

"Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.

1VAC30-46-50. Scope of accreditation.

A. Commercial environmental laboratories shall be accredited based on the general laboratory standards set out in Part II (1VAC30-46-200 et seq.) of this chapter and on the specific test methods or analysis, monitoring or measurement required by Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) or Virginia Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the regulations promulgated under these laws, and by permits and orders issued under and in accordance with these laws and regulations.

B. ~~DGS DCLS~~ DCLS shall review alternative test methods and procedures for accreditation when these are proposed by the applicant laboratory. The provisions of 1VAC30-46-70 E and 1VAC30-46-90 B govern alternative test methods and procedures.

C. Accreditation shall be granted for one or more fields of accreditation, including the matrix, the technology and methods used by the commercial environmental laboratory, and the individual analytes ~~or analyte groups~~ determined by the particular method.

1VAC30-46-60. General: accreditation requirements.

A. Components of accreditation. The components of accreditation include review of personnel qualifications, on-site assessment, proficiency testing and quality assurance and quality control standards. The criteria for these components, specified in Part II (1VAC30-46-200 et seq.) of this chapter, shall be fulfilled for accreditation.

B. Individual laboratory sites and mobile laboratories.

1. Individual laboratory sites are subject to the same application process, assessments, and other requirements as environmental laboratories. Any remote laboratory sites are considered separate sites and subject to separate on-site assessments.

2. Laboratories located at the same physical location shall be considered an individual laboratory site if these laboratories are owned by the same person, and have the same technical ~~director~~ manager and quality system.

~~3. Laboratories located at separate, noncontiguous physical locations may request to be considered as an individual laboratory site if these laboratories are owned by the same person and have the same laboratory manager and quality system.~~

~~4.~~ 3. A mobile laboratory, which is configured with equipment to perform environmental analyses, whether associated with a fixed-based laboratory or not, is considered an environmental laboratory and shall require separate accreditation. This accreditation shall remain with the mobile laboratory and be site independent. Moving the configured mobile laboratory to a different site shall not require a new or separate accreditation. Before performing analyses at each new site, the laboratory shall ensure that instruments and equipment have been checked for performance and have been calibrated.

1VAC30-46-70. Process to apply and obtain accreditation.

A. Duty to apply. All owners of (i) commercial environmental laboratories and (ii) ~~NELAP-accredited~~ TNI-accredited commercial environmental laboratories applying for ~~reciprocal~~ secondary accreditation shall apply for accreditation as specified by the provisions of this section.

~~B. Timely initial applications.~~

~~1. Owners of commercial environmental laboratories applying for accreditation under this chapter for the first time shall submit an application to DGS DCLS no later than July 1, 2009.~~

~~2. Owners of commercial environmental laboratories that come into existence after January 1, 2009, shall submit an initial application to DGS DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services.~~

~~3. Owners of NELAP accredited environmental laboratories.~~

~~a. During the initial accreditation period, NELAP-accredited environmental laboratories shall submit an application to DGS DCLS no later than July 1, 2009.~~

~~b. After the program is established, NELAP-accredited environmental laboratories shall submit an application to DGS DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services in Virginia.~~

~~C. Timely renewal applications.~~

~~1. Every two years from the date of initial accreditation, laboratories accredited under this chapter shall submit an application for renewal of accreditation as required by subsection F of this section, including the fees required by 1VAC30-46-150. During this biannual renewal DGS DCLS shall perform an on-site assessment in addition to a review of the laboratory's application package.~~

~~2. Every other year, DGS DCLS shall renew accreditation for the accredited laboratory provided the laboratory does all of the following:~~

~~a. Maintains compliance with this chapter.~~

~~b. Attests to this compliance by signing the Certificate of Compliance provided under subdivision F 3 of this section.~~

~~c. Reports acceptable proficiency test values for the Fields of Accreditation for which the laboratory held accreditation during the previous year.~~

~~The laboratory shall submit the application information required by subdivisions F 1 (except for the quality manual) and F 3 of this section.~~

~~3. Renewal application due dates.~~

~~a. The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 1 of this section at least 90 calendar days prior to expiration of accreditation.~~

~~b. The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 2 of this section at least 30 calendar days prior to expiration of accreditation.~~

B. Initial applications. Owners of commercial environmental laboratories applying for accreditation under this chapter for the first time shall submit an application to DCLS as specified under subsection F of this section.

C. Renewal and reassessment.

1. DCLS shall renew accreditation annually for the accredited laboratory provided the laboratory does the following:

a. Maintains compliance with this chapter.

b. Attests to this compliance by signing the certificate of compliance provided under subdivision F 3 of this section.

c. Reports acceptable proficiency test values as required by 1VAC30-46-210 B.

d. Pays the fee required by 1VAC30-46-150.

2. DCLS shall reassess the accredited environmental laboratory during an on-site assessment as required by 1VAC30-46-220.

D. Responsibilities of the owner and operator when the laboratory is owned by one person and operated by another person.

1. When an environmental laboratory is owned by one person but is operated by another person, the operator may submit the application for the owner.

2. If the operator fails to submit the application, the owner is not relieved of his responsibility to apply for accreditation.

3. While ~~DGS-DCLS~~ DCLS may notify environmental laboratories of the date their applications are due, failure of ~~DGS-DCLS~~ DCLS to notify does not relieve the owner of his obligation to apply under this chapter.

E. Submission of applications for modifications to accreditation. An owner of an accredited environmental laboratory shall follow the process set out in 1VAC30-46-90 B ~~to add a new matrix technology/method, an analyte or, analyte group, modify a test method or institute use of a method or technology not in the laboratory's standard operating procedures, including alternative test methods or procedures~~ to modify the laboratory's scope of accreditation.

F. Contents of application.

1. Applications shall include but not be limited to the following information and documents:

a. Legal name of laboratory;

b. Name of owner of laboratory;

c. Name of operator of laboratory, if different than owner;

d. Street address and description of location of laboratory;

e. Mailing address of laboratory, if different from street address;

f. Address of owner, if different from laboratory address;

g. Name, address, telephone number, facsimile number and e-mail, as applicable, of responsible official;

h. Name, address, telephone number, facsimile number and e-mail, as applicable, of technical ~~director~~ manager;

i. Name, address, telephone number, facsimile number and e-mail, as applicable, of designated quality assurance officer;

j. Name~~, title~~ and telephone number of laboratory contact person;

k. Laboratory type (e.g., commercial, public wastewater system, mobile);

l. Laboratory hours of operation;

m. Fields of accreditation for which the laboratory is seeking accreditation;

~~n. Methods employed, including analytes;~~

~~o.~~ n. The results of ~~the three most recent proficiency test studies~~ two successful unique TNI-compliant PT studies for each accreditation field of proficiency testing as required by 1VAC30-46-210 B (for primary accreditation only);

~~p.~~ o. Quality assurance manual (for primary accreditation only);

~~q. Lab identification number (for renewal only)~~ p. Copy of the primary certificate of accreditation for secondary accreditation applications; and

~~r.~~ q. For mobile laboratories, a unique vehicle identification number, such as a manufacturer's vehicle identification number (VIN #), serial number, or license number.

2. Fee. The application shall include payment of the fee as specified in 1VAC30-46-150.

3. Certification of compliance.

a. The application shall include a "Certification of Compliance" statement signed and dated by (i) the quality assurance officer, and ~~a~~ (ii) the responsible official or the technical ~~director~~ manager, or both.

b. The certification of compliance shall state: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance

with the Virginia environmental laboratory accreditation program regulation (1VAC30 Chapter 46) and is subject to the provisions of 1VAC30-46-100 in the event of noncompliance. Specifically the applicant:

(1) Shall commit to fulfill continually the requirements for accreditation set by DCLS for the areas where accreditation is sought or granted.

(2) When requested, shall afford such accommodation and cooperation as is necessary to enable DCLS to verify fulfillment of requirements for accreditation. This applies to all premises where laboratory services take place.

(3) Shall provide access to information, documents, and records as necessary for the assessment and maintenance of the accreditation.

(4) Shall provide access to those documents that provide insight into the level of independence and impartiality of the laboratory from its related bodies, where applicable.

(5) Shall arrange the witnessing of laboratory services when requested by DCLS.

(6) Shall claim accreditation only with respect to the scope for which it has been granted accreditation.

(7) Shall pay fees as shall be determined by the accreditation body.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the laboratory or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. Submitting false information or data shall result in denial or withdrawal of accreditation. I further certify that I am authorized to sign this application."

G. Completeness determination.

1. ~~DGS DCLS~~ DCLS shall determine whether an application is complete and notify the laboratory of the result of such determination. ~~During the initial accreditation period, DGS DCLS~~ DCLS shall provide this notice within 90 calendar days of its receipt of the ~~initial~~ application. ~~Following the initial accreditation period, DGS DCLS shall provide this notice as follows:~~

~~a. Within 60 calendar days of DGS DCLS' receipt of a laboratory's initial application.~~

~~b. Within 30 calendar days of DGS DCLS' receipt of a laboratory's renewal application under subdivision C 1 of this section.~~

~~c. Within 15 calendar days of DGS DCLS' receipt of a laboratory's renewal application under subdivision C 2 of this section.~~

2. An ~~initial~~ application ~~or an application for renewal under subdivision C 1 of this section~~ shall be determined complete if it contains all the information required pursuant to subsection F of this section and is sufficient to evaluate the laboratory prior to the on-site assessment. ~~DGS DCLS shall consider an application for renewal under subdivision C 2 of this section to be complete if it contains the information required under subdivision C 2 of this section.~~ Designating an application complete does not preclude ~~DGS DCLS~~ DCLS from requesting or accepting additional information.

3. If ~~DGS DCLS~~ DCLS determines that an application is incomplete, ~~DGS DCLS's~~ the DCLS notification of such determination shall explain why the application is incomplete and specify the additional information needed to make the application complete.

4. ~~Except during the initial accreditation period, if~~ If DCLS makes no determination ~~is made within 60~~ within 90 calendar days of ~~DGS DCLS's~~ its receipt of either (i) the application or (ii) additional information, in the case of an application determined to be incomplete, the application shall be determined to be complete. ~~During the initial accreditation period, the time period shall be 90 calendar days.~~

5. If the laboratory has not submitted the required additional information within 90 days of receiving a notice from ~~DGS DCLS~~ DCLS requesting additional information, ~~DGS DCLS~~ DCLS may ~~return the incomplete application and~~ inform the laboratory that the application cannot be processed. The laboratory may then submit a new application.

H. Grant of interim accreditation pending final determination on application.

1. ~~DGS DCLS~~ DCLS shall grant interim accreditation status to laboratories applying initially ~~or for renewal under subdivision C 1 of this section~~ under the following conditions:

a. The laboratory's application is determined to be complete;

b. The laboratory has satisfied all the requirements for accreditation, including all requests for additional information, with the exception of on-site assessment; and

c. ~~DGS DCLS~~ DCLS is unable to schedule the on-site assessment within ~~90~~ 120 days of its determination that the application is complete ~~(for initial applications) or before the laboratory's accreditation expires (for renewal applications under subdivision C 1 of this section)~~.

~~2. DGS DCLS shall grant interim accreditation status to a laboratory renewing its accreditation under subdivision C 2 of this section during its review of the renewal application if the owner has submitted a complete application as required under subdivision C 2 of this section.~~

~~3.~~ 2. A laboratory with interim accreditation status shall have the same rights and status as a laboratory that has been granted accreditation by ~~DGS-DCLS~~ DCLS.

~~4.~~ 3. Interim accreditation status shall not exceed 12 months.

I. On-site assessment.

~~1.~~ An on-site assessment shall be performed and the follow-up and reporting procedures for such assessments shall be completed in accordance with ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-220 prior to issuance of a final determination on accreditation.

~~2. Alternative on-site assessment option. If DGS-DCLS is unable to schedule an on-site assessment under the conditions of subdivision H 1 c of this section, the owner of the applicant laboratory may use third-party on-site assessors instead of DGS-DCLS on-site assessors under the following conditions:~~

~~a. The third-party on-site assessors are on a DGS-DCLS-approved list of NELAC-trained on-site assessors; and~~

~~b. The owner of the applicant laboratory agrees to pay the third-party on-site assessors.~~

J. Final determination on accreditation.

~~1.~~ Upon completion of the accreditation review process and corrective action, if any, ~~DGS-DCLS~~ DCLS shall grant accreditation in accordance with subsection K of this section or deny accreditation in accordance with subsection L of this section.

~~2. Except during the initial accreditation period, DGS-DCLS shall complete action on a laboratory's application within nine months from the time a completed application is received from the laboratory.~~

~~3. During the initial accreditation period, DGS-DCLS shall notify applicants of their interim accreditation status under subsection H of this section only after all applications have been reviewed and are determined to be complete.~~

~~4. During the final approval process of the initial accreditation period, DGS-DCLS shall notify applicants of their final accreditation status only after all timely and complete applications have been reviewed, all on-site assessments have been completed, and accreditation status has been determined for all applicant laboratories.~~

~~5. During the final approval process, DGS-DCLS shall release on-site assessment reports to applicants at the time that applicants are notified of their final accreditation status.~~

K. Grant of accreditation.

1. When a laboratory meets the requirements specified for receiving accreditation, ~~DGS-DCLS~~ DCLS shall issue a certificate to the laboratory. The certificate shall be sent to the technical ~~director~~ manager, and the responsible official shall be notified.

2. The director of ~~DGS-DCLS~~ DCLS or his designee shall sign the certificate. ~~The certificate shall be transmitted as a sealed and dated document.~~

3. The certificate shall include the following information:

a. Name of owner of laboratory;

b. Name of operator of laboratory, if different from owner;

c. Name of responsible official;

d. Address and location of laboratory;

e. Laboratory identification number;

f. Fields of accreditation (matrix, technology/method and ~~analyte/analyte group)~~ analyte) for which accreditation is granted;

g. Any addenda or attachments; and

h. Issuance date and expiration date.

4. ~~National Environmental Laboratory Accreditation Program (NELAP)~~ TNI-accreditation status.

a. Laboratories accredited under this chapter are accredited under the standards of ~~the National Environmental Laboratory Accreditation Conference~~ TNI.

b. The certificate of accreditation shall contain the ~~NELAP~~ TNI insignia.

c. Accredited laboratories shall comply with the provisions of 1VAC30-46-130 with regard to the use of these certificates and their status as ~~NELAP-accredited~~ TNI-accredited laboratories.

5. The laboratory shall post the most recent certificate of accreditation and any addenda to the certificate issued by ~~DGS-DCLS~~ DCLS in a prominent place in the laboratory facility.

6. Accreditation shall expire one year after the date on which accreditation is granted.

L. Denial of accreditation.

1. ~~DGS-DCLS~~ DCLS shall deny accreditation to an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support accreditation.

2. Denial of accreditation in total or in part.

a. ~~DGS-DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory fails to do any of the following:

(1) Pay the required fees;

(2) Employ laboratory staff to meet the personnel qualifications as required by ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 A;

(3) Successfully analyze and report proficiency testing samples as required by ~~Part II of this chapter~~ 1VAC30-46-210 B;

(4) Submit a corrective action ~~report~~ plan in accordance with ~~Part II of this chapter~~ 1VAC30-46-220 in response to a deficiency report from the on-site assessment team within the required 30 calendar days;

(5) Implement the corrective actions detailed in the corrective action ~~report~~ plan within the time frame specified by ~~DGS-DCLS~~ DCLS;

(6) Pass required on-site assessment as specified in ~~Part II of this chapter~~ 1VAC30-46-220; or

(7) Implement a quality system as defined in ~~Part II of this chapter~~ 1VAC30-46-210 C.

b. ~~DGS-DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory's application is not determined to be complete within 90 days following notification of incompleteness because the laboratory is delinquent in submitting information required by ~~DGS-DCLS~~ DCLS in accordance with this chapter.

c. ~~DGS-DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the ~~DGS-DCLS~~ DCLS on-site assessment team is unable to carry out the on-site assessment pursuant to ~~1VAC30-46-210 B~~ 1VAC30-46-220 because a representative of the environmental laboratory denied the team entry during the laboratory's normal business hours that it specified in the laboratory application.

3. ~~DGS-DCLS~~ DCLS shall follow the process specified in 1VAC30-46-110 when denying accreditation to an environmental laboratory.

M. Reapplication following denial of accreditation.

~~1. Upon denial of accreditation, the laboratory shall wait six months before reapplying for accreditation.~~

~~2. DGS-DCLS~~ DCLS shall not waive application fees for a laboratory reapplying for accreditation.

1VAC30-46-80. Maintaining accreditation.

A. Accreditation remains in effect until withdrawn by ~~DGS-DCLS~~ DCLS, withdrawn voluntarily at the written request of the accredited laboratory, or expiration of the accreditation period. To maintain accreditation, the accredited laboratory shall comply with the elements listed in this section and in 1VAC30-46-90.

B. Quality systems. A laboratory seeking to maintain accreditation under this regulation shall assure consistency and promote the use of quality assurance and quality control procedures. ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 C specifies the quality assurance and quality control requirements that shall be met to maintain accreditation. The laboratory shall establish and maintain a quality system based on ~~the~~ these required elements ~~contained in Part II~~.

C. Proficiency tests. Laboratories seeking to maintain accreditation under this regulation shall perform proficiency tests as required under ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 B.

D. Recordkeeping and retention. All laboratory records associated with accreditation parameters shall be kept as provided by the requirements for records under Part II (1VAC30-46-200 et seq.) of this chapter. These records shall be maintained for a minimum of five years unless designated for a longer period by another regulation or authority. All such records shall be available to ~~DGS-DCLS~~ DCLS upon request.

1VAC30-46-90. Notifications and changes to accreditation elements and status.

A. Changes to key accreditation criteria. The accredited laboratory shall notify ~~DGS-DCLS~~ DCLS in writing of any changes in key accreditation criteria within 30 calendar days of the change. Key accreditation criteria are laboratory ownership (including legal, commercial, or organizational status), location, resources and premises, key personnel (including top management), ~~and~~ major instrumentation, and quality system policies.

B. Changes to scope of accreditation.

1. ~~DGS-DCLS~~ DCLS may approve a laboratory's application to add a new matrix, technology, analyte, or test method to a laboratory's scope of accreditation or otherwise modify the laboratory's scope of accreditation by performing a data review.

2. To apply, the owner of the accredited laboratory shall submit the following to ~~DGS-DCLS~~ DCLS:

a. A ~~letter~~ written request signed by the owner that briefly summarizes the addition to be made to the laboratory's scope of accreditation.

b. Pertinent information demonstrating the laboratory's capability to perform the additional matrix, technology/method, or ~~analyte/analyte group~~ analyte, such as proficiency testing performance and quality control performance.

c. A written standard operating procedure covering the new matrix, technology/method, or ~~analyte/analyte group~~ analyte.

3. ~~DGS-DCLS~~ DCLS may approve a laboratory's application for modification to its scope of accreditation by performing a review of the application materials submitted, without an on-site assessment. The addition of a new technology or test method requiring the use of specific equipment may require an on-site assessment. Other reviews of performance and documentation may be carried out by ~~DGS-DCLS~~ DCLS, depending on the modification for which the laboratory applies.

4. Within 90 calendar days of the receipt of the application from the accredited environmental laboratory, ~~DGS-DCLS~~ DCLS shall review and determine whether the proposed modification may be approved.

5. If the proposed modification to the laboratory's scope of accreditation is approved, ~~DGS-DCLS~~ DCLS shall amend the laboratory's certificate of accreditation.

6. DCLS shall not send the amended certificate of accreditation to the laboratory until DCLS receives the payment of the fee required under 1VAC30-46-150 F 1.

C. Change of ownership or location of laboratory.

1. The accredited laboratory shall submit a written notification to ~~DGS-DCLS~~ DCLS of the change of ownership or location of the laboratory within 30 calendar days of the change. This requirement ~~applies only to fixed-based and not~~ pertaining to change of location does not apply to mobile laboratories.

2. Accreditation may be transferred when the legal status or ownership of a accredited laboratory changes as long as the transfer does not affect the laboratory's personnel, equipment, or organization.

3. If the laboratory's personnel, equipment, or organization are affected by the change of legal status or ownership, ~~DGS-DCLS~~ DCLS may require reaccreditation or reapplication in any or all of the categories for which the laboratory is accredited.

4. ~~DGS-DCLS~~ DCLS may require an on-site assessment depending on the nature of the change of legal status or ownership. ~~DGS-DCLS~~ DCLS shall determine the elements of any on-site assessment required.

~~5. When there is a change in ownership, the new owner of the accredited laboratory shall assure historical traceability of the laboratory accreditation numbers.~~

~~6.~~ 5. When there is a change in ownership, the new owner of the accredited laboratory shall keep for a minimum of five years all records and analyses performed by the previous owner ~~under his scope of accreditation for a period of five years~~ pertaining to accreditation. These records and analyses are subject to inspection by ~~DGS-DCLS~~ DCLS during this five-year period. This provision applies regardless of change of ownership, accountability or liability.

D. Voluntary withdrawal. Any environmental laboratory owner who wishes to withdraw the laboratory from its accreditation status or from being accredited, in total or in part, shall submit written notification to ~~DGS-DCLS no later than 30 calendar days before the end of the laboratory's accreditation term~~ DCLS. ~~Within 30 calendar days, DGS-DCLS~~ DCLS shall provide the laboratory with a written notice of withdrawal.

1VAC30-46-95. Suspension of accreditation.

A. Before withdrawing accreditation, DCLS may suspend accreditation from an environmental laboratory in total or in part to allow the laboratory time to correct the reason for which DCLS may withdraw accreditation. Suspension is limited to the reasons listed in subsection B of this section.

B. DCLS may suspend accreditation from an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by 1VAC30-46-210 B.

2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each accredited field of testing out of the three most recent proficiency testing studies as defined in 1VAC30-46-210 B.

3. Maintain a quality system as defined in 1VAC30-46-210 C.

4. Employ staff that meets the personnel qualifications of 1VAC30-46-210 A.

5. Notify DCLS of any changes in key accreditation criteria as set forth in 1VAC30-46-90.

C. Process to suspend accreditation.

1. When DCLS determines that cause exists to suspend a laboratory, the agency shall send notification to the responsible official and the technical manager stating the agency's determination that the laboratory has failed to meet the 1VAC30-46 standards for one or more of the reasons listed in subsection B of this section. DCLS shall send the notification by certified mail.

2. In its notice, DCLS shall request the laboratory to notify DCLS in writing if the laboratory believes the agency is incorrect in its determination.

3. The notification shall state that the laboratory is required to take corrective action whenever a failure occurs and to document the corrective action. The notification shall require the laboratory to provide DCLS with documentation of the corrective action taken with regard to its failure to meet a standard under this chapter.

4. The notification shall state what the laboratory is required to do to restore its accreditation status and the time allowed to do so.

5. The environmental laboratory may proceed to correct the deficiencies for which DCLS has suspended the laboratory's accreditation.

6. Alternatively the laboratory may state in writing that DCLS is incorrect in its determination regarding suspension, giving specific reasons why the laboratory believes DCLS should not suspend accreditation.

7. With the exception of subdivision B 4 of this section, DCLS may allow the laboratory up to 60 days to correct the problem for which it may have its accreditation suspended.

8. DCLS shall set a date for suspension that follows the period provided under subdivision B 7 of this section to restore accreditation.

9. If the laboratory does not correct its deficiencies within the time period allowed, DCLS shall suspend a laboratory in part or in total.

10. DCLS shall notify the laboratory by letter of its suspension status. DCLS shall send the notification by certified mail. DCLS shall also notify the pertinent Virginia state agency of the laboratory's suspension status.

11. The laboratory may provide information demonstrating why suspension is not warranted in accordance with the standard referenced in the initial DCLS notification. If such information is not provided prior to the suspension date, the laboratory accepts the DCLS decision to suspend.

12. The laboratory has the right to due process as set forth in 1VAC30-46-110.

D. Responsibilities of the environmental laboratory and DCLS when accreditation has been suspended.

1. The term of suspension shall be limited to six months or the period of accreditation whichever is longer.

2. The environmental laboratory shall not continue to analyze samples or report analysis for the fields of accreditation for which DCLS has suspended accreditation.

3. The environmental laboratory shall retain accreditation for the fields of accreditation, methods, and analytes where it continues to meet the requirements of this chapter.

4. The laboratory's suspended accreditation status shall change to accredited when the laboratory demonstrates to DCLS that the laboratory has corrected the deficiency or deficiencies for which its accreditation was suspended.

5. An environmental laboratory with suspended accreditation shall not have to reapply for accreditation if the cause or causes for suspension are corrected within the term of suspension.

6. If the laboratory fails to correct the causes of suspension within the term of suspension, DCLS shall withdraw the laboratory's accreditation in total or in part.

1VAC30-46-100.Withdrawal of accreditation.

A. ~~DGS-DCLS~~ DCLS shall withdraw accreditation from an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support ~~certification:~~ accreditation.

B. ~~DGS-DCLS~~ DCLS may withdraw accreditation from an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by ~~1VAC30-46-210 C~~ 1VAC30-46-210 B.

2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each affected accredited field of testing out of the three most recent proficiency testing studies as defined in ~~1VAC30-46-210 C~~ 1VAC30-46-210 B.

3. Maintain a quality system as defined in ~~1VAC30-46-210 D~~ 1VAC30-46-210 C.

4. Employ staff that ~~meet~~ meets the personnel qualifications of 1VAC30-46-210 A.

5. Submit an acceptable corrective action ~~report~~ plan after two opportunities as specified in ~~1VAC30-46-210 B~~ 1VAC30-46-220.

6. Implement corrective action specified in the laboratory's corrective action ~~report~~ plan as set out under ~~1VAC30-46-210 B~~ 1VAC30-46-220.

7. Notify ~~DGS-DCLS~~ DCLS of any changes in key accreditation criteria as set forth in 1VAC30-46-90.

8. Use correct and authorized references to the laboratory's accreditation status or that of ~~DGS-DCLS~~ DCLS in the laboratory's documentation and advertising as set forth in 1VAC30-46-130.

9. Allow a DCLS assessment team entry during normal business hours to conduct an on-site assessment required by 1VAC30-46-220.

10. Pay required fees specified in 1VAC30-46-150.

C. ~~DGS-DCLS~~ DCLS shall follow the process specified in 1VAC30-46-110 when withdrawing accreditation from an environmental laboratory.

D. Responsibilities of the environmental laboratory and ~~DGS-DCLS~~ DCLS when accreditation has been withdrawn.

1. Laboratories that lose their accreditation in full shall return their certificate to ~~DGS-DCLS~~ DCLS.

2. If a laboratory loses accreditation in part, ~~an addendum to the certificate shall be issued by DGS-DCLS~~ DCLS shall issue a revised certificate to the laboratory.

3. The laboratory shall discontinue the use of all materials that contain either a reference to the environmental laboratory's past accreditation status or that display the ~~NELAC/NELAP~~ TNI logo. These materials may include catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical ~~results~~ reports, or other materials.

4. The environmental laboratory shall not continue to analyze samples or report analyses for the fields of accreditation for which DCLS has withdrawn accreditation.

E. After correcting the reason or cause for the withdrawal of accreditation under 1VAC30-46-100 A or B, the laboratory owner may reapply for accreditation under 1VAC30-46-70 B and E.

1VAC30-46-110. Procedures to deny or withdraw accreditation, to withdraw accreditation, and appeal procedures.

A. Notification.

1. If ~~DGS-DCLS believes it has grounds~~ DCLS determines that cause exists to deny accreditation to or withdraw

accreditation from an environmental laboratory, ~~DGS-DCLS~~ DCLS shall notify the environmental laboratory in writing of its ~~intent to hold an informal fact finding under § 2.2-4019 of the Code of Virginia in order to make a decision on the denial of accreditation or withdrawal of accreditation~~ determination. ~~DGS-DCLS~~ DCLS shall send this notification by certified mail to the responsible official and provide a copy to the technical ~~director~~ manager of the environmental laboratory. ~~The notice of informal fact finding shall provide a detailed explanation of the basis for the notice.~~

2. For denial of accreditation, the notice shall state that the laboratory has failed to meet the standards in 1VAC30-46 and shall specify one or more of the reasons for denial of accreditation under 1VAC30-46-70 L, providing a detailed explanation of the basis for the denial of accreditation.

3. For withdrawal of accreditation, the notice shall state that the laboratory has failed to meet the standards in 1VAC30-46 and shall specify one or more of the reasons for withdrawal of accreditation under 1VAC30-46-100 A or B, providing a detailed explanation of the basis for the withdrawal of accreditation.

4. In its notice, DCLS shall request the laboratory to notify DCLS in writing if the laboratory believes the agency is incorrect in its determination.

5. If the laboratory believes DCLS to be incorrect in its determination, the laboratory shall provide DCLS with a detailed written demonstration of why DCLS should not deny or withdraw accreditation.

~~B. Following the informal fact finding held pursuant to § 2.2-4019 of the Code of Virginia, the director shall render a decision regarding accreditation, and shall send this notification by certified mail to the responsible official and provide a copy to the technical director of the environmental laboratory. If the director's decision is adverse to the environmental laboratory, the responsible official may appeal this decision in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.~~

~~C. The provisions of this section do not preclude informal discussions between DGS-DCLS and any environmental laboratory that has been notified of a possible denial or withdrawal of accreditation. These informal discussions to resolve the concerns that prompted the notice shall be held prior to the informal fact finding proceeding.~~

B. An environmental laboratory may appeal a final decision by DCLS to deny or withdraw accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~D.~~ C. The accreditation status of an environmental laboratory appealing withdrawal of accreditation shall not change pending the final decision of the appeals filed under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Part 2A of the Rules of the Supreme Court of Virginia.

1VAC30-46-120. ~~National accreditation database.~~ Information about accredited environmental laboratories.

~~DGS-DCLS shall provide to NELAP the following information about environmental laboratories accredited under this chapter: (i) technical director's name; (ii) ownership and location of laboratory and any changes; (iii) key accreditation criteria and any changes; (iv) interim, as well as final, accreditation status; and (v) on-site assessment reports.~~ DCLS shall make available to the public information identifying the environmental laboratories that it has accredited under this chapter.

1VAC30-46-130. Use of accreditation status by environmental laboratories accredited under this chapter.

A. The owner of an environmental laboratory accredited under this chapter shall not misrepresent the laboratory's fields of accreditation or its accreditation status on any document. This includes laboratory reports, catalogs, advertising, business solicitations, proposals, quotations or other materials.

B. Environmental laboratories accredited under this chapter shall comply with all of the following:

1. Post or display their most recent accreditation certificate or their fields of accreditation in a prominent place in the laboratory facility.

2. Make accurate statements concerning their fields of accreditation and accreditation status.

3. Accompany ~~DGS-DCLS's~~ DCLS's name or the ~~NELAC/NELAP~~ TNI logo or both with at least the phrase ~~"NELAP-accredited"~~ "TNI-accredited" and the laboratory's identification number or other identifier when ~~DGS-DCLS's~~ DCLS's name is used on general literature such as catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials.

4. Not use their accreditation certificate, their accreditation status or the ~~NELAC/NELAP~~ TNI logo to imply endorsement by ~~DGS-DCLS~~ DCLS.

C. The owners of laboratories accredited under this chapter who choose to (i) use ~~DGS-DCLS's~~ DCLS's name; (ii) make reference to its ~~NELAP~~ TNI accreditation status; or (iii) use the ~~NELAC/NELAP~~ TNI logo in any catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials, shall comply with both of the following:

1. Distinguish between proposed testing for which the laboratory is accredited and the proposed testing for which the laboratory is not accredited.

2. Include the laboratory's identification number or other identifier.

1VAC30-46-140. ~~Reciprocal~~ Secondary accreditation.

A. ~~DGS-DCLS, when recognized by NELAP as a primary accrediting authority,~~ DCLS may grant ~~reciprocal~~ secondary accreditation to an environmental laboratory that holds a current accreditation from another ~~NELAP-recognized~~ TNI-recognized primary ~~accrediting authority~~ accreditation body.

B. The owner of a ~~NELAP-accredited~~ TNI-accredited environmental laboratory that seeks accreditation under this chapter shall apply as specified in 1VAC30-46-70 with the exception of 1VAC30-46-70 F 1 n and o.

C. The owner of the applicant laboratory shall pay the fee required by 1VAC30-46-150.

D. ~~DGS-DCLS~~ DCLS shall not require a ~~NELAP-accredited~~ TNI-accredited environmental laboratory that seeks accreditation under this section to meet any additional proficiency testing, quality assurance, or on-site assessment requirements for the fields of accreditation for which the laboratory holds primary ~~NELAP~~ TNI accreditation.

E. ~~DGS-DCLS~~ DCLS shall consider only the current certificate of accreditation issued by the ~~NELAP-recognized~~ TNI-recognized primary ~~accrediting authority~~ accreditation body.

F. ~~DGS-DCLS shall do the following: 1. Grant reciprocal~~ DCLS shall grant secondary accreditation for only the fields of accreditation offered under this chapter for which the laboratory holds current primary ~~NELAP~~ TNI accreditation.

~~2. Except during the initial accreditation period, grant reciprocal accreditation and issue certificates to an applicant laboratory within 30 calendar days of receipt of the laboratory's application.~~

~~G. Potential nonconformance issues.~~

~~1. If DGS-DCLS notes any potential nonconformance with the NELAC standards by a laboratory during the initial application process for reciprocal accreditation or for a laboratory that already has been granted NELAP accreditation through reciprocal accreditation, DGS-DCLS shall immediately notify, in writing, the applicable NELAP-recognized primary accrediting authority and the laboratory. The notification shall cite the applicable sections within the NELAC standards for which nonconformance by the laboratory has been noted.~~

~~2. If the alleged nonconformance is noted during the initial application process for reciprocal accreditation, final action on the application for reciprocal accreditation shall not be taken until the alleged nonconformance issue has been resolved.~~

~~3. If the alleged nonconformance is noted after reciprocal accreditation has been granted, the laboratory shall maintain its current accreditation status until the alleged nonconformance issue has been resolved.~~

~~4. If DGS-DCLS does not believe the primary accrediting authority has taken timely and appropriate action on the potential nonconformance, DGS-DCLS shall notify the NELAP director of its concerns.~~

1VAC30-46-150. Fees.

A. General.

1. ~~Fees shall be submitted~~ Environmental laboratories shall pay a fee with all applications, including reapplications, for accreditation ~~and all renewal applications for accreditation under 1VAC30-46-70 C 1~~. ~~Applications shall not be designated as complete until the fee is received by DGS-DCLS.~~ DCLS shall not designate an application as complete until it receives payment of the fee.

2. ~~Fees shall be nonrefundable.~~ Each accredited environmental laboratory shall pay an annual fee to maintain its accreditation. DCLS shall send an invoice to the accredited environmental laboratory.

3. An environmental laboratory applying for ~~reciprocal~~ secondary accreditation under ~~this chapter~~ 1VAC30-46-140 shall pay the same fee as other laboratories subject to this chapter.

4. Fees shall be nonrefundable.

B. Fee computation.

~~1. The fee shall be the total of the base fee and the test category fees.~~

~~2. The test category fees cover categories for the test methods to be accredited as specified in the laboratory's application.~~

~~3. If the total of the base fee and the test category fees is more than the maximum fee, the laboratory shall pay the maximum fee.~~

1. Fees shall be applied on an annual basis.

2. Environmental laboratories shall pay the total of the base fee and the test category fees set out in subsections C and D of this section for the first 12 months following (insert the effective date of this chapter).

3. Environmental laboratories shall pay the total of the base fee and the test category fees required by subsections C and D of this section as adjusted by the method set out in subsection E of this section beginning the second 12 months following (insert the effective date of this chapter) and for each of the 12-month periods that follow.

C. Base fee. ~~The base fee shall be $1,700.~~

1. DCLS determines the base fee for a laboratory by taking into account both the total number of methods and the total number of field of accreditation matrices for which the laboratory would be accredited.

2. DCLS shall charge the base fees set out in Table 1. The base fee for a laboratory is located by first finding the row for the total number of methods to be accredited and then finding the box on that row located in the column headed by the total number of matrices to be accredited. For example, DCLS charges a base fee of $1300 to a

laboratory performing a total of eight methods for one matrix.

TABLE 1: BASE FEES

Number of Methods	One Matrix	Two Matrices	Three Matrices	Four or more Matrices
1-9	$1300	$1430	$1575	$1730
10-29	$1400	$1575	$1750	$1950
30-99	$1550	$1825	$2150	$2550
100-149	$1650	$1980	$2375	$2850
150+	$1800	$2250	$2825	$3525

~~D. Maximum fee. The maximum fee shall be $5,200.~~

~~E.~~ D. Test category fees.

1. The test category fees cover the types of testing for which a laboratory may be accredited as specified in the laboratory's application or as accredited at the time of annual billing.

~~1.~~ 2. Fees shall be charged for each category of tests to be accredited.

3. Fees shall be charged for the total number of field of accreditation matrices to be accredited under the specific test category. For example, if a laboratory is performing inorganic chemistry for both nonpotable water and solid and chemical matrices, the fee for this test category would be found in the column for two matrices.

~~2.~~ 4. The fee for each category includes one or more analytical methods unless otherwise specified. ~~With the exception of the test categories labeled oxygen demand and physical, test categories related to test methods for water are defined by 40 CFR 136.3.~~

5. Test category fees. DCLS shall charge the test category fees set out in Table 2. The test category fees for a laboratory are located by first finding the row with the total number of test methods for the test category to be accredited. The fee to be charged for the test category will be found on that row in the column headed by the total number of matrices to be accredited. A laboratory performing four test methods for bacteriology in both nonpotable and drinking water (two matrices) would be charged a test category fee of $330.

~~3. Fees.~~

~~TEST CATEGORY~~	~~FEE~~
~~Oxygen demand (BOD or COD)~~	~~$375~~
~~Bacteriology~~	~~$375~~
~~Inorganic chemistry, fewer than four methods~~	~~$375~~
~~Inorganic chemistry, four or more methods~~	~~$750~~
~~Chemistry metals, one - two methods~~	~~$450~~
~~Chemistry metals, more than two methods~~	~~$1,000~~
~~Organic chemistry, fewer than four methods~~	~~$600~~
~~Organic chemistry, four or more methods~~	~~$1,200~~
~~Aquatic toxicity, acute methods only~~	~~$400~~
~~Aquatic toxicity, acute and chronic methods~~	~~$700~~
~~Radiochemical~~	~~$1,000~~
~~Physical~~	~~$375~~

TABLE 2: TEST CATEGORY FEES

	Fees by Number of Matrices		
Test Category	One	Two	Three or More
Aquatic toxicity, acute methods only	$400	N/A	N/A
Aquatic toxicity, acute and chronic methods	$600	N/A	N/A
Oxygen demand	$225	$335	$435
Bacteriology, 1-3 total methods	$175	$265	$345
Bacteriology, 4 or more total methods	$220	$330	$430
Physical, 1-5 total methods	$175	$265	$345
Physical, 6-10 total methods	$220	$330	$430
Physical, 11 or more total methods	$275	$415	$540
Inorganic chemistry, 1-10 total methods	$250	$375	$490
Inorganic chemistry, 11-20 total methods	$315	$475	$620
Inorganic chemistry, 21-49 total methods	$394	$590	$767
Inorganic chemistry, 50 or more total methods	$492	$740	$962
Chemistry metals, 1-5 total methods	$325	$490	$637
Chemistry metals, 6-20 total methods	$410	$615	$800
Chemistry metals, 21 or more total methods	$512	$770	$1000
Organic chemistry, 1-5 total methods	$400	$600	$780
Organic chemistry, 6-20	$500	$750	$975

total methods			
Organic chemistry, 21-40 total methods	$625	$940	$1222
Organic chemistry, 41 or more total methods	$780	$1170	$1520
Radiochemical, 1-10 total methods	$600	$900	$1170
Radiochemical, 11 or more total methods	$725	$1090	$1420
Asbestos	$725	$1090	$1420

6. Fee examples. Three examples are provided.

a. Example 1:

Base Fee	One matrix and four test methods	$1300
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	$175
Nonpotable Water	Oxygen demand (1 method)	$225
Nonpotable Water	Physical (1 method)	$175
TOTAL		$1875

b. Example 2:

Base Fee	One matrix and 15 test methods	$1400
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	$175
Nonpotable Water	Inorganic chemistry (9 methods)	$250
Nonpotable Water	Metals (2 methods)	$325
Nonpotable Water	Oxygen demand (1 method)	$225
Nonpotable Water	Physical (1 method)	$175
TOTAL		$2550

c. Example 3:

Base Fee	Two matrices and 27 test methods	$1575
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (4 methods)	$220
Nonpotable Water	Oxygen demand (1 method)	$225
Solid and Chemical Materials	Metals (1 method)	$325
Two Matrices		
Nonpotable Water and Solid and Chemical Materials	Inorganic chemistry (13 methods)	$475
Nonpotable Water and Solid and Chemical Materials	Physical (7 methods)	$330
TOTAL		$3150

E. Calculation of fees - fees beginning (insert the 13th month following the effective date of this chapter).

1. DCLS shall revise the base fee and test category fee tables after the first 12 months following (insert the effective date of this chapter) and every 12-month period thereafter.

2. DCLS shall increase or decrease the fees set out in the base fee and the test category fee tables using the Consumer Price Index-Urban (CPI-U) percentage change, average-average for the previous calendar year. (The CPI-U for all urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics. Examples of the CPI-U average-average are -0.04%, +1.6%, and +3.2% for 2009, 2010, and 2011, respectively. DCLS would determine the fees in the tables for 2012, for example, by increasing each fee by 3.2%, the CPI-U average-average percentage change for 2011.)

3. DCLS shall revise each previous year's tables so that the revisions will be cumulative, reflecting the changes in the CPI-U over time.

4. DCLS shall round the revised fees to the nearest dollar.

5. DCLS shall publish the revised base fee and test category fee tables annually on its VELAP website.

F. Additional fees. Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of accreditation under 1VAC30-46-90 B, (ii) transfer of ownership under 1VAC30-46-90 C, ~~(iii) request that multiple,~~

~~noncontiguous laboratory sites be considered as one site under 1VAC30-46-60 B 3,~~ or ~~(iv)~~ (iii) petition for a variance under 1VAC30-46-160.

1. For any accredited environmental laboratory that applies to modify its scope of accreditation as specified under 1VAC30-46-90 B, ~~DGS-DCLS~~ DCLS shall assess a fee determined by the method in subsection G of this section.

2. Under 1VAC30-46-90 C, ~~DGS-DCLS~~ DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if ~~DGS-DCLS~~ DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. ~~DGS-DCLS~~ DCLS shall assess a fee determined by the method in subsection G of this section. ~~If DGS-DCLS determines that a fee should be charged, the fee shall be a minimum of $100 and a maximum of $1,000.~~ If, under 1VAC30-46-90 C, ~~DGS-DCLS~~ DCLS determines that the change of ownership or location of laboratory requires reaccreditation of or reapplication by the laboratory, the laboratory shall pay the application fee required under this section.

~~3. Under 1VAC30-46-60 B 3, the owner of multiple noncontiguous laboratories may request that DGS-DCLS consider these laboratories to be one site. If, as a result of the request being granted, DGS-DCLS needs to perform multiple on-site assessments, DGS-DCLS shall charge a fee for the additional on-site assessments. The fee shall be the sum of reasonable travel costs and labor charges for the additional on-site assessments. The labor charges will be determined following the method in subsection G of this section.~~

~~4.~~ 3. Under 1VAC30-46-160, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. ~~DGS-DCLS~~ DCLS shall charge a fee for the time needed to review the petition, including any on-site assessment required. The fee shall be determined by the method specified in subsection G of this section.

G. ~~Fee~~ Additional fees determination.

1. The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.

2. An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, DGS, for billing purposes).

3. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

4. If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

H. Out-of-state laboratories ~~travel costs~~ applying for primary accreditation.

1. The owner of an environmental laboratory located in another state who applies for primary accreditation under this chapter shall ~~also~~ pay a ~~fee equal to the~~ surcharge of $5000 plus the labor costs of the on-site assessment and reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges. These charges shall be in addition to the fees charged under subdivision A 1 and subsections B through E of this section.

2. Once the laboratory is accredited, DCLS shall charge the annual fee specified in subdivision A 2 and subsections B through E of this section, the labor costs for the on-site assessment, and reasonable travel costs associated with conducting the on-site assessment.

I. ~~DGS-DCLS~~ DCLS shall derive the travel costs charged under subsections G and H of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.

Part II
Standards

1VAC30-46-200. Incorporation ~~of NELAC standards~~ by reference of TNI standards.

~~A. The 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards approved June 5, 2003, as specified in 1VAC30-46-210 are incorporated by reference into this chapter.~~

~~B. Laboratories applying for accreditation and accredited under this chapter shall comply with the 2003 NELAC standards incorporated by reference into 1VAC30-46-210.~~

~~C. The requirements of Chapter 4 of the 2003 NELAC standards, Accreditation Process, are incorporated by reference into this chapter unless the requirements are (i) already addressed in this chapter, (ii) superseded by Virginia law, or (iii) incorporated by reference into 1VAC30-46-210.~~

A. The following TNI standards are incorporated by reference into this chapter: The Standards for Environmental Laboratories and Accreditation Bodies, 2009 (The NELAC Institute (TNI)), Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis, and Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories, except for section 6.6 of Module 3 concerning confidential business information.

B. Environmental laboratories applying for accreditation and accredited under this chapter shall comply with the TNI standards incorporated by reference into subsection A of this section. For convenience these standards are specified by

accreditation component in 1VAC30-46-210 and 1VAC30-46-220.

C. The TNI standards are organized by volume and module.

1. Volume 1 - Management and Technical Requirements for Laboratories Performing Environmental Analysis includes the following modules:

a. Proficiency Testing.

b. Quality Systems General Requirements.

c. Quality Systems for Asbestos Testing.

d. Quality Systems for Chemical Testing.

e. Quality Systems for Microbiological Testing.

f. Quality Systems for Radiochemical Testing.

g. Quality Systems for Toxicity Testing.

2. Volume 2 - General Requirements for Accreditation Bodies Accrediting Environmental Laboratories includes the following modules:

a. General Requirements.

b. Proficiency Testing.

c. On-Site Assessment.

1VAC30-46-210. Standards for accreditation.

~~A. Standards for personnel qualifications. The standards for personnel qualifications are the following provisions of the National Environmental Laboratory Accreditation Conference (NELAC) standards as incorporated by reference into this part: Chapter 4, Accreditation Process, specifically, Components of Accreditation and Personnel Qualifications (4.1.1) and Chapter 5, Quality Systems, specifically, Technical Requirements - Personnel (5.5.2).~~

~~B. Standards for on-site assessment. The standards for on-site assessment are the following provisions of the NELAC standards as incorporated by reference into this part.~~

~~1. Chapter 3, On-site Assessment with one exception. Subsection 3.4.5, Confidential Business Information (CBI) Considerations, shall not be incorporated by reference into this part.~~

~~2. Chapter 4, Accreditation Process, specifically, On-site Assessments and Corrective Action Reports in Response to On-site Assessment (4.1.2 and 4.1.3).~~

~~C. Standards for proficiency testing. The standards for proficiency testing are the following provisions of the NELAC standards as incorporated by reference into this part.~~

~~1. Chapter 2, Proficiency Testing, specifically, Introduction, Scope, and Applicability; Major PT Groups and Their Responsibilities; Laboratory Enrollment in Proficiency Testing Programs; Requirements for Laboratory Testing of PT Study Samples; and PT Criteria for Laboratory Accreditation (2.1, 2.2, 2.4 through 2.7).~~

~~2. Chapter 4, Accreditation Process, specifically, Proficiency Testing Samples (4.1.4).~~

~~D. Standards for quality systems.~~

~~1. The standards for quality systems are the following provisions of the NELAC standards as incorporated by reference into this part: (i) Chapter 4, specifically, Accountability for Analytical Standards and (ii) Chapter 5, Quality Systems.~~

~~2. Quality systems - scope. Chapter 5 of the NELAC standards sets out the scope of quality systems requirements. These provisions provide an overview to major aspects of the accreditation process and are set out below for emphasis:~~

~~a. Chapter 5 includes all quality assurance policies and quality control procedures that shall be delineated in a quality manual and followed to ensure and document the quality of the analytical data. Laboratories seeking accreditation shall assure implementation of all quality assurance policies and the essential applicable quality control procedures specified in this chapter. The quality assurance policies, which establish essential quality control procedures, are applicable to environmental laboratories regardless of size and complexity.~~

~~b. The intent of Chapter 5 is to provide sufficient detail concerning quality management requirements so that DGS-DCLS can evaluate environmental laboratories consistently and uniformly.~~

~~c. Chapter 5 sets out the general requirements that a laboratory has to successfully demonstrate to be recognized as competent to carry out specific environmental tests.~~

~~d. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not clear which standards or requirements are more stringent, the standard or requirement from the method or regulation is to be followed.~~

A. Standards for personnel. The standards for personnel are found in Section 5.2 of Volume 1, Module 2 of the TNI standards.

B. Standards for proficiency testing.

1. The standards for proficiency testing are found in (i) Module 1 and (ii) section 4.11 of Module 2 of Volume 1 of the TNI standards.

2. Additional requirements from Volume 2, Module 2 of the TNI standards.

a. A laboratory shall perform two proficiency test studies each calendar year for each FoPT. These proficiency testing studies shall be performed at least five months apart and no longer than seven months apart within the calendar year.

b. The following proficiency testing studies shall not apply when meeting the requirements of subdivision 2 a of this subsection:

(1) Studies used for corrective action to reestablish successful history in order to maintain accreditation; and

(2) Studies used to reinstate accreditation after DCLS suspends accreditation.

c. DCLS shall consider a laboratory's analytical result for a FoPT not acceptable for the following reasons:

(1) When the laboratory does not report the results within the time frames specified in Volume 1, Module 1 of the TNI standards.

(2) When the laboratory makes any reporting error or omission that results in a nonspecific match between the analytical result for the FoPT and any criterion that identifies the laboratory or the field of accreditation for which the PT sample was analyzed for the purpose of initial or continued accreditation.

d. If DCLS requests a corrective action plan from a laboratory, the laboratory shall provide the plan within 30 calendar days of the request.

e. A laboratory may withdraw from a study for any FoPT on or before the close date of the study. Withdrawing from a study shall not exempt the laboratory from meeting the semiannual analysis requirements necessary for continued accreditation.

C. Standards for quality systems.

1. General requirements for all environmental laboratories are found in Volume 1, Module 2 of the TNI standards.

2. Requirements for the specific types of testing that may be performed by an individual environmental laboratory are found in Volume 1, Modules 3 through 7 of the TNI standards.

3. Drinking water laboratories obtaining certification under this chapter shall meet the reporting requirements set out in 1VAC30-40 for compliance with 12VAC5-590-530 and 12VAC5-590-540.

1VAC30-46-220. On-site assessment.

A. The standards for on-site assessment are found in Volume 2, Module 3 of the TNI standards. The requirements specific to environmental laboratories are set out in this section.

B. DCLS shall conduct a comprehensive on-site assessment of an environmental laboratory prior to granting final primary accreditation to the laboratory.

C. Frequency of on-site assessment.

1. DCLS shall reassess each accredited laboratory every two years starting from the date of the previous assessment plus or minus six months.

2. Other on-site assessments.

a. If DCLS identified a deficiency on a previous on-site assessment, the agency may conduct a follow-up on-site assessment.

b. DCLS may conduct an on-site assessment under the following circumstances:

(1) A laboratory applies to modify its scope of accreditation;

(2) A transfer of ownership occurs that affects personnel, equipment, or the laboratory facilities; or

(3) A laboratory applies for an exemption or a variance.

c. Any other change occurring in a laboratory's operations that might reasonably be expected to alter or impair analytical capability and quality may trigger an on-site assessment.

D. Announced and unannounced on-site assessments. DCLS, at its discretion, may conduct either announced or unannounced on-site assessments. Advance notice of an assessment shall not be necessary.

E. Preparation for the on-site assessment.

1. Prior to the actual site visit, DCLS may request in writing from a laboratory those records required to be maintained by this chapter.

2. DCLS may opt not to proceed with an on-site assessment based on nonconformities found during document and record review.

F. Areas to be assessed.

1. DCLS shall assess the laboratory against the standards incorporated by reference and specified in 1VAC30-46-200 and 1VAC30-46-210.

2. The laboratory shall ensure that its quality manual, analytical methods, quality control data, proficiency test data, laboratory SOPs, and all records needed to verify compliance with the standards specified in 1VAC30-46-200 and 1VAC30-46-210 are available for review during the on-site assessment.

G. National security considerations.

1. Assessments at facilities owned or operated by federal agencies or contractors may require security clearances, appropriate badging, or a security briefing before the assessment begins.

2. The laboratory shall notify DCLS in writing of any information that is controlled for national security reasons and cannot be released to the public.

H. Arrival, admittance, and opening conference.

1. Arrival. DCLS and the laboratory shall agree to the date and schedule for announced on-site assessments.

2. Admittance of assessment personnel. A laboratory's refusal to admit the assessment personnel for an on-site assessment shall result in an automatic failure of the laboratory to receive accreditation or loss of an existing accreditation by the laboratory, unless there are extenuating circumstances that are accepted and documented by DCLS.

3. Health and safety. Under no circumstance, and especially as a precondition to gain access to a laboratory, shall assessment personnel be required or even allowed to sign any waiver of responsibility on the part of the laboratory for injuries incurred during an assessment.

4. Opening conference. An opening conference shall be conducted and shall address the following topics:

a. The purpose of the assessment;

b. The identification of assessment personnel;

c. The test methods that will be examined;

d. Any pertinent records and procedures to be examined during the assessment and the names of the individuals in the laboratory responsible for providing assessment personnel with such records;

e. The roles and responsibilities of laboratory staff and managers;

f. Any special safety procedures that the laboratory may think necessary for the protection of assessment personnel;

g. The standards and criteria that will be used in judging the adequacy of the laboratory operation;

h. Confirmation of the tentative time for the exit conference; and

i. Discussion of any questions the laboratory may have about the assessment process.

I. On-site laboratory records review and collection.

1. Records shall be reviewed by assessment personnel for accuracy, completeness, and the use of proper methodology for each analyte and test method to be evaluated.

2. Records required to be maintained pursuant to this chapter shall be examined as part of an assessment for accreditation.

J. Observations of and interviews with laboratory personnel.

1. As an element of the assessment process, the assessment team shall evaluate an analysis regimen by requesting that the analyst normally conducting the procedure give a step-by-step description of exactly what is done and what equipment and supplies are needed to complete the regimen. Any deficiencies shall be noted and discussed with the analyst. In addition, the deficiencies shall be discussed in the closing conference.

2. Assessment personnel may conduct interviews with appropriate laboratory personnel.

3. Calculations, data transfers, calibration procedures, quality control and quality assurance practices, adherence to test methods, and report preparation shall be assessed for the complete scope of accreditation with appropriate laboratory analysts.

K. Closing conference.

1. Assessment personnel shall meet with representatives of the laboratory following the assessment for a closing conference.

2. During the closing conference, assessment personnel shall inform the laboratory of the preliminary findings and the basis for such findings. The laboratory shall have an opportunity to provide further explanation or clarification relevant to the preliminary findings. If the laboratory objects to the preliminary findings during the closing conference, all objections shall be documented by the assessment personnel and included in the final report to DCLS.

3. Additional problem areas may be identified in the final report.

L. Follow-up and reporting procedures.

1. DCLS shall provide an on-site assessment report to the laboratory documenting any deficiencies found by DCLS within 30 calendar days of the last day of the on-site assessment.

2. When deficiencies are identified in the assessment report, the laboratory shall have 30 calendar days from the date of its receipt of the on-site assessment report to provide a corrective action plan to DCLS.

3. The laboratory's corrective action plan shall include the following:

a. Any objections that the laboratory has with regard to the on-site assessment report;

b. The action that the laboratory proposes to correct each deficiency identified in the assessment report;

c. The time period required to accomplish the corrective action; and

d. Documentation of corrective action that the laboratory has already completed at the time the corrective action plan is submitted.

4. If the corrective action plan, or a portion of the plan, is determined to be unacceptable to remedy the deficiency, DCLS shall provide written notification to the responsible official and technical manager of the laboratory, including a detailed explanation of the basis for such determination. Following receipt of such notification, the laboratory shall have an additional 30 calendar days to submit a revised corrective action plan acceptable to DCLS.

5. DCLS may withdraw accreditation from a laboratory under 1VAC30-46-100 B 5 if DCLS finds the second revised corrective action plan to be unacceptable.

6. The laboratory shall submit documentation to DCLS that the corrective action set out in its plan has been completed within the time period specified in the plan.

7. DCLS, under 1VAC30-46-100 B 6, may withdraw accreditation from a laboratory if the laboratory fails to implement the corrective actions set out in its corrective action plan.

8. DCLS shall grant final accreditation as specified in 1VAC30-46-70 K upon successful completion of any required corrective action following the on-site assessment.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC30-46)

~~Application for Certification of Environmental Laboratories, DGS-21-156 (eff. 1/09).~~

Application for Accreditation under 1VAC30-46 - must be obtained from program staff at Lab_Cert@dgs.virginia.gov.

Laboratory Management Qualifications, DGS-21-179 (eff. 2/09)

Applicant Laboratory Certification of Compliance, DGS-21-180 (eff. 8/12)

VELAP Request for Change of Scope - Request Authorization, DGS-21-185 (eff. 7/13)

Corrective Action (CA) Form, DGS-35-192 (rev. 4/13)

On-site Assessment Corrective Action Plan (CAP) Form, DGS-35-196 (eff. 5/13)

Sample - On-site Assessment Corrective Action Plan (CAP) Form, DGS-35-196 (eff. 5/13)

Fee Payment Form for Virginia Laboratory Certification Programs, DGS-35-232 (rev. 1/11)

Documentation Requested by VELAP Prior to Laboratory On-site Assessment, DGS-35-233 (rev. 3/13)

Demonstration of Capability Certification Statement, DGS-35-234 (eff. 4/10)

DOCUMENTS INCORPORATED BY REFERENCE (1VAC30-46)

~~2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards, EPA/600/R-04/003, Approved at Ninth NELAC Annual Meeting, June 5, 2003.~~

The Standards for Environmental Laboratories and Accreditation Bodies, 2009, The NELAC Institute (TNI), P.O. Box 2439, Weatherford, TX 76086; www.nelac-institute.org:

Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis (EL-V1-2009)

Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories (EL-V2-2009)

VA.R. Doc. No. R12-3067; Filed July 30, 2013, 3:13 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT (BOARD) OF JUVENILE JUSTICE

Final Regulation

Title of Regulation: **6VAC35-20. Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (amending 6VAC35-20-10, 6VAC35-20-30, 6VAC35-20-35, 6VAC35-20-37, 6VAC35-20-50, 6VAC35-20-60, 6VAC35-20-69, 6VAC35-20-75, 6VAC35-20-80, 6VAC35-20-90, 6VAC35-20-92, 6VAC35-20-93, 6VAC35-20-94, 6VAC35-20-100, 6VAC35-20-110, 6VAC35-20-120, 6VAC35-20-150; adding 6VAC35-20-36, 6VAC35-20-36.1, 6VAC35-20-61, 6VAC35-20-85, 6VAC35-20-91, 6VAC35-20-115, 6VAC35-20-200, 6VAC35-20-210, 6VAC35-20-220, 6VAC35-20-230, 6VAC35-20-240; repealing 6VAC35-20-63, 6VAC35-20-65, 6VAC35-20-67).**

Statutory Authority: §§ 16.1-233 and 66-10 of the Code of Virginia.

Effective Date: September 25, 2013.

Agency Contact: Barbara Peterson-Wilson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email barbara.peterson-wilson@djj.virginia.gov.

Summary:

Amendments include (i) separating the requirements for the certification of court service units and facilities and the auditing of VJCCCA programs and offices on youth; (ii) making the director or designee responsible for issuing certifications, with oversight by the board, when a program or facility is found in noncompliance with applicable regulatory requirements; (iii) reducing the number of required onsite monitoring visits from two (one announced, one unannounced) to one scheduled per year; (iv) adding a requirement for court service units and facilities to perform self-audits; (v) clarifying pre-audit, audit, and post-audit procedures, including setting specific time frames; (vi) incorporating the requirements for corrective action plans and certification audit reports by including some requirements from the existing procedures and practices; (vii) setting specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance; (viii) adding a requirement for the program's or facility's supervisory or governing authority to be provided with notice of the certification action; (ix) incorporating the parameters for the board's review of programs and facilities found in noncompliance; (x) reworking the section regarding actions following decertification to track statutory authority; and (xi) removing the outdated list of "mandatory standards."

The substantive changes to the regulation since publication of the proposed stage are related to notice of the certification determination date and certification action when there is a noncompliance notice. These changes include:

1. The program or facility administrator shall be provided notice of the right to appear 10 business days prior to the director's or designee's consideration of the audit report and final certification determination.

2. When a facility is less than 100% compliant with all regulatory requirements and the certification unit provides a subsequent status report prior to the certification action that identifies 100% compliance with all regulatory requirements, the director or designee shall certify the facility for a specific period of time up to three years.

3. When a facility is (i) less than 100% compliant with all critical regulatory requirements or (ii) less than 90% compliant with all noncritical regulatory requirements and the certification unit provides a subsequent status report prior to the certification action that identifies 100% compliance with all critical regulatory requirements and at least 90% compliance with all noncritical regulatory requirements, the director or designee shall certify the facility for a specific period of time up to three years.

4. If the certification unit provides a subsequent status report and there is still a finding of less than 100% compliance with all critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements and there is an acceptable corrective action plan, the certification shall be continued for up to a year with the requirement that a status report be completed for review prior to extending the certification period.

5. If the status report results find 100% compliance with all critical regulatory requirements and 90% or greater compliance on noncritical regulatory requirements, the director or designee shall certify the facility for a specific period of time up to three years.

6. If the status report results find the program or facility continues to fail to meet compliance requirements, the program or facility shall be placed on probation for a period of up to a year.

7. If there is not an acceptable corrective action plan or there is a health, welfare, or safety violation, or both, the program and facility shall be placed on probation for up to a year or decertified.

8. Programs and facilities in probationary status shall have a status report completed prior to the expiration of the probationary period and (i) if the status report results find the program meets compliance requirements, the facility or program shall be certified for up to three years or (ii) if the status report results find the program fails to meet compliance requirements, the facility or program shall be decertified.

9. Additionally, the director or designee has the authority to make certification decisions outside of the regulatory requirements under certain circumstances.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 20
~~REGULATIONS~~ REGULATION GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION OF JUVENILE JUSTICE PROGRAMS AND FACILITIES

Part I
Definitions and General Provisions

6VAC35-20-10. Definitions.

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

~~"Administrative probation" means the status granted to a program or facility in an emergency situation at the discretion of the director pending the next regularly scheduled board meeting.~~

~~"Administrative review" means the audit of the administrative records of a local jurisdiction or governing commission. The administrative review involves only a review of documentation housed at a central office.~~

"Appeal of a finding of noncompliance" means the action taken by a ~~unit,~~ facility or program administrator after ~~an~~ a certification audit when there is disagreement with a ~~team~~ finding of noncompliance with an individual regulatory requirement.

"Audit team leader" means the person designated by the director or designee to organize and facilitate the certification audit or the audit of a VJCCCA program or office on youth.

"Board" means the Virginia Board of Juvenile Justice.

"Certification" or "certified" means the ~~board's~~ formal finding that a program ~~meets (i) all mandatory standards; (ii) an acceptable percentage of all other standards as indicated in the chart at 6VAC35-20-100; and (iii) the requirements of applicable board policies; and~~ or facility is ~~consequently~~ approved to operate for a specific period of time as provided for in 6VAC35-20-100.

"Certification action" means the department's decision to issue or deny certification or to decertify a program or facility as provided for in 6VAC35-20-100 or the board's decision to take action pursuant to 6VAC35-20-115.

"Certification audit" means ~~an on-site visit by~~ the process by which designated personnel ~~to~~ assess a program's or facility's compliance with applicable ~~board standards and policies~~ regulatory requirements, which includes an on-site visit, the results of which are reported ~~to the board for~~ in a certification audit report for certification action as provided for in 6VAC35-20-100. All facilities and court service units regulated by the board shall be subject to certification audits.

"Certification audit report" ~~or "audit report"~~ means the official report of certification audit findings prepared ~~for review by the board~~ by the audit team leader as provided for in 6VAC35-20-90.

"Certification status" means the type of certification ~~approved by the board for~~ issued to a ~~given~~ program or facility, ~~including~~ which includes the period of time specified in the certificate, during which the program or facility is approved to operate and must maintain ~~its standards compliance levels and have acceptable plans of action~~ compliance with its regulatory requirements and any corrective action plan.

~~"Certified" means that the board has approved a program to operate under the conditions set out in 6VAC35-20-100.~~

"Compliance" means meeting the requirements of a standard or an applicable board policy.

"Compliance documentation" means specific documents or information including records, reports, observations, and verbal responses to establish or confirm compliance with a regulatory requirement by a program or facility.

"Conditional certification" means a temporary certification status issued to a new or newly opened facility as provided for in 6VAC35-20-100.

"Corrective action plan" means a written document that, in accordance with 6VAC35-20-91, states what has been or will be done to bring all deficiencies into compliance with regulatory requirements.

"Critical regulatory requirements" means those regulatory requirements for programs or facilities, as defined by the board, that must be maintained at 100% compliance. Critical regulatory requirements were previously termed "mandatory standards."

"Decertified" means ~~that a previously certified program does not meet the requirements to be certified and is no longer approved to operate~~ a status imposed in accordance with 6VAC35-20-120 when it is determined that a program or facility has not met an acceptable percentage of compliance with its regulatory requirements as provided for in 6VAC35-20-85.

"Deficiency" and "noncompliance" means that the program or facility (i) does not meet~~,~~ or has not demonstrated that it meets~~, the requirements of a board standard or policy~~ regulatory requirements or (ii) does not comply with the Virginia Juvenile Community Crime Control Act local plan approved by the board.

"Department" means the Virginia Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice.

~~"Life, health,~~ "Health, welfare, or safety violation" means any action or omission that ~~results in noncompliance with a board standard or policy and~~ causes an immediate and ~~potentially serious~~ substantial threat to the ~~life,~~ health, welfare, or safety of the ~~youth~~ juveniles or staff in juvenile residential ~~programs~~ facilities.

"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 certified pursuant to this chapter. As used in this regulation, the term includes juvenile group homes and halfway houses, juvenile secure detention centers, and juvenile correctional centers.

~~"Mandatory standards" means those standards of performance for programs as defined by the board which must be maintained in 100% compliance at all times.~~

"Monitoring review" means a review by designated department personnel assessing the program's or facility's compliance with regulatory requirements. A monitoring review may be conducted via electronic means and does not require on-site examination of the program or facility. A monitoring review may be done in conjunction with a program's or facility's self-audit, which is provided for in 6VAC35-20-61.

"Monitoring visit" means an on-site ~~review~~ evaluation and inspection by designated personnel to assess a program's or facility's compliance with ~~board-approved standards, policies and, when applicable, Virginia Juvenile Community Crime Control Act local plan~~ regulatory requirements.

"Newly opened facility" means ~~both~~ (i) a facility that is newly constructed ~~and~~ or (ii) an existing facility that is being placed in service as a juvenile residential ~~program~~ facility.

"Office on Youth" means nonresidential programs funded via the Virginia Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia).

["Preliminary summary suspension order" means an order issued by the director as provided in 6VAC35-20-37 taking immediate action against a program or facility when there is a known substantial health, welfare, or safety threat. This order is issued summarily prior to review by the board and is subject to due process protections after issuance.]

~~"Plan of action" means a written document that explicitly states what has been or will be done to bring all deficiencies into compliance with board standards and policies.~~

~~"Probation"~~ "Probationary certification" means the temporary status granted to a program ~~by the board~~ or facility to provide a period of time in which to ~~come into~~ demonstrate compliance with ~~standards~~ regulatory requirements.

"Program" means a ~~juvenile residential facility,~~ court service unit~~,~~ or a nonresidential service subject to ~~standards or policies of the board~~ applicable regulatory requirements. For the purpose of this regulation, VJCCCA programs and offices on youth are not included in this definition.

"Program or facility administrator" means the ~~staff member~~ individual responsible for the ~~operation~~ operations of a

program~~,~~ or facility ~~or institution~~ subject to regulatory requirements.

~~"Random sampling" means a system for selecting programs for monitoring visits, by which all programs in a given category have a similar likelihood of being selected for a visit, but which may not result in any given program receiving a monitoring visit during any given period of time.~~

"Regulatory requirement" means a provision of a regulation promulgated by the board to which a program or facility must adhere. A section, subsection, or subdivision of a regulation may include multiple regulatory requirements as provided for in 6VAC35-20-85.

~~"Substantial compliance" means that the program meets all applicable mandatory standards and at least 90% of all other applicable standards.~~

["Status report" means a report that summarizes a review of the areas on which there was a finding of noncompliance and states the program's or facility's compliance standing indicated through the review. For a status report, the regulatory requirements are monitored at the same level of compliance as assessed in the certification audit.]

"Summary suspension order" means an order issued by the director in accordance with § 66-24 of the Code of Virginia and 6VAC35-20-37 temporarily suspending a program's or facility's certification.

~~"Systemic deficiency" means that deficiencies have been found in three or more separate but related standards and have been cited by certification personnel as indicating that a program may have significant problems in a given area such as recordkeeping, training, health services, social services, security, etc.~~

~~"Unresolved life, health or safety violation" means a life, health or safety violation that is not corrected in an approved corrective plan of action or that has recurred after the life, health or safety violation was noted during an interim monitoring visit.~~

"Variance" means a board action that relieves a program or facility from having to meet a specific ~~standard~~ regulatory requirement or develop a corrective action plan ~~of action~~ for that ~~standard, either permanently or~~ regulatory requirement for a determined period of time~~, when (i) waiving these requirements will not result in a threat to the life, health or safety of juveniles or staff; (ii) enforcement will create an undue hardship; (iii) the standard is not specifically required by statute or by the regulations of another government agency; (iv) the standard is not designated as mandatory by the board; and (v) juveniles' care or services would not be adversely affected~~.

"VJCCCA program" means a nonresidential program established under 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).

"VJCCCA program or office on youth audit" means the on-site visit by designated department personnel to assess a program funded through 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) or the Virginia Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia) for compliance with the regulatory requirements as provided for in 6VAC35-150 (Regulation for Nonresidential Services) and 6VAC35-60 (Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs), as applicable.

"VJCCCA program or office on youth audit report" means an official report of a VJCCCA program or office on youth audit.

"Waiver" means a formal statement from the department temporarily excusing a program or facility from meeting a ~~nonmandatory standard~~ noncritical regulatory requirement pending board action on a formal variance request.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or electronic form.

6VAC35-20-30. Purpose.

This regulation prescribes how, in accordance with ~~Code of Virginia~~ §§ 16.1-234, ~~16.1-309.1,~~ 16.1-249, 16.1-309.9 ~~B~~, 16.1-309.10, 16.1-349, ~~and~~ 66-10, 66-24, and 66-25.1:3 of the Code of Virginia, (i) the ~~Board and Department of Juvenile Justice~~ department will monitor ~~and approve~~ and audit juvenile residential facilities, programs, VJCCCA programs, and offices on youth; (ii) the department will certify residential facilities and ~~nonresidential programs~~ state-operated and local court service units that are part of the Commonwealth's juvenile justice system; and (iii) the board will review certification audit reports of programs and facilities found in noncompliance with applicable regulatory requirements.

6VAC35-20-35. Guidance documents.

To help programs and facilities meet all regulatory ~~and policy~~ requirements, the department shall prepare guidance documents compiling all ~~standards and policies~~ regulatory requirements applicable to each type of program or facility subject to this chapter and stating how compliance will be assessed. The guidance documents [~~will~~ shall] serve as the basis for monitoring visits, monitoring reviews, certification audits, ~~and the board's certification action~~ and VJCCCA program or offices on youth audits. [The guidance documents shall be posted on the department's website at http://www.djj.virginia.gov.]

6VAC35-20-36. Program or facility relationship to regulatory authority.

A. The program or facility shall submit or make available to the audit team leader such reports and information required to establish compliance with applicable regulatory requirements.

Documentation supporting compliance with regulatory requirements shall be retained by the program or facility from the date of the previous certification audit or VJCCCA program or office on youth audit.

B. The program or facility administrator shall notify the director or designee within five business days of any significant change in administrative structure or newly hired chief administrative officer or program or facility administrator or director.

C. The program or facility administrator shall, [~~as required~~] in [~~the applicable guidance documents as prescribed in 6VAC35-20-35~~ accordance with the process established by the department], notify the director or designee of the following:

1. Any serious incidents affecting the health, welfare, or safety of citizens, individuals under the supervision of the department, or staff;

2. Lawsuits against or settlements relating to the health, welfare, safety, or human rights of residents; and

3. Any criminal charges or reports of suspected child abuse or neglect against staff relating to the health, welfare, safety, or human rights of residents.

6VAC35-20-36.1. Department response to reports of health, welfare, or safety violations.

[~~A.~~] Whenever the department becomes aware of a health, welfare, or safety violation, the department shall take immediate action to correct the situation if not already done by the program or facility. The department's actions may include, but are not limited to, the following:

1. Reporting the situation to child protective services, the Virginia State Police or the law-enforcement agency with jurisdiction, or other enforcement authorities, as applicable and appropriate; or

2. Taking any action authorized in 6VAC35-20-37 for violations in a juvenile residential facility.

[~~B. The department shall report~~ 3. Reporting] to the board no later than its next regularly scheduled meeting (i) the nature and scope of the health, welfare, or safety violation and (ii) the action taken by the department or the program or facility to correct the violation.

6VAC35-20-37. Director's authority to take immediate administrative action.

A. Nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any ~~life,~~ health, welfare, or safety violation or (ii) a program or facility is not in ~~substantial~~ compliance with ~~board-approved standards, policies,~~ regulatory requirements or ~~local plan for~~ the Virginia Juvenile Community Crime Control Act ~~programs~~ requirements. Such administrative action may include, but is not limited to (a) withholding funds; (b) removing juveniles from the program or facility; ~~or~~ (c) placing the program or facility on ~~administrative probation~~ probationary certification status for up to six months pending ~~certification action~~ review by the board pursuant to 6VAC35-20-115; or (d) summarily suspending the certificate pursuant to subsection B of this section. In taking such action, the department shall notify the program or facility administrator, the administrative entity ~~that~~ to which the program or facility reports ~~to~~, and the board, in writing, of the reason for the administrative action and the action the program or facility must take to correct the ~~situation~~ violation.

B. In accordance with subsection A of this section ~~and pursuant to the provisions set forth in § 66-24 of the Code of Virginia~~, the director may issue a preliminary summary ~~order of~~ suspension order of the ~~license or~~ certificate of ~~any group home or~~ the juvenile residential facility ~~so~~ regulated by the ~~department.~~ board as follows:

1. ~~Conditions~~ A preliminary [~~order of~~ summary] suspension [order] may be issued when conditions or practices ~~existing~~ exist in the ~~home or~~ facility ~~posing~~ that pose an immediate and substantial threat to the health, welfare, or safety~~, and welfare~~ of the residents ~~include~~ including, but not limited to, the following:

a. Violations of any provision of applicable laws or applicable regulations made pursuant to such laws;

b. Permitting, aiding, or abetting the commission of any illegal act in the regulated ~~home or~~ facility;

c. Engaging in conduct or practices that are in violation of statutes related to abuse or neglect of children;

d. Deviating significantly from the program or services for which a ~~license or~~ certificate was issued without obtaining prior written approval from the regulatory authority or failing to correct such deviations within the specified time; or

e. Engaging in a willful action or gross negligence that jeopardizes the care or protection of the resident.

2. The director shall immediately upon issuance of the preliminary summary suspension order and without delay notify the ~~licensee or~~ certificate holder verbally and ~~by~~ in writing via (i) facsimile, (ii) electronic mail, or (iii) hand delivery of the issuance of the preliminary order of suspension and the opportunity for a hearing before the director or ~~his~~ designee within three ~~working~~ business days of the issuance of the preliminary summary ~~order of~~ suspension order. The chair of the board must be notified immediately when the director issues a preliminary summary suspension order. In accordance with 6VAC35-20-36.1, the director shall report the action taken to the board no later than its regularly scheduled meeting.

a. The ~~licensee or~~ certificate holder may decline the opportunity for an appeal to the director or ~~his~~ designee.

b. Whenever an appeal is requested and a criminal charge is also filed against the appellant involving the same conduct, the appeal process shall be stayed until the

criminal prosecution is completed. During such stay, the ~~licensee's or~~ certificate holder's right of access to the records of the department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in court has been completed, the department shall advise the appellant in writing of his right to resume his appeal within the ~~timeframes~~ time frames provided by law and regulation.

3. The ~~licensee or~~ certificate holder may appear before the director or ~~his~~ designee by personal appearance or by telephone. Any documents filed may be transmitted by facsimile and the facsimile and any signatures thereon shall serve, for all purposes, as an original document.

a. Upon request, the department shall provide the appellant a summary of the information used in making its determination. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In the case of any information being withheld, the ~~licensee or~~ certificate holder shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld.

b. The director or ~~his~~ designee shall preside over the appeal. With the exception of the director, no person whose regular duties include substantial involvement with the certification ~~or licensing~~ of the facilities shall preside over the appeal.

(1) The ~~licensee or~~ certificate holder may be represented by counsel.

(2) The ~~licensee or~~ certificate holder shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

4. The director or ~~his~~ designee shall have the authority to sustain, amend, or reverse the preliminary summary suspension order. If sustained or amended, the order is considered final. The director or ~~his~~ designee shall notify the ~~licensee or~~ certificate holder in writing of the results of the appeal and of the right to appeal the final order to the appropriate circuit court within 10 [business] days of the ~~hearing~~ decision. Notification of the results of the appeal before the director or ~~his~~ designee shall be mailed certified with return receipt to the ~~licensee or~~ certificate holder.

a. The chair of the board must be immediately notified when the director issues a final ~~order of~~ summary suspension order. In accordance with ~~6VAC35-20-65~~ 6VAC35-20-36.1, the director shall report the action taken to the board no later than its next regularly scheduled meeting ~~the action taken~~.

b. If the ~~licensee or~~ certificate holder is not satisfied, the ~~licensee or~~ certificate holder may dispute the noncompliance finding in accordance with ~~6VAC35-20-67~~ 6VAC35-20-90.

Part II
Certification Audits of Programs and Facilities

6VAC35-20-50. Preaudit process for certification audits.

A. At least six months in advance of ~~an~~ a certification audit, ~~personnel designated by the director~~ the department shall notify each program or facility to be audited of the scheduled audit date and the name of the designated audit team leader.

B. ~~Up until~~ At least 90 [calendar] days before the scheduled audit, the program or facility administrator may request that the audit be rescheduled. Except as provided in 6VAC35-20-100, audits, even if rescheduled, must occur before the expiration of the current certification, unless specifically approved by the director.

~~C. Audit team members shall be appointed and notified of their appointment at least 30 days prior to the scheduled audit. The program administrator of the agency to be audited shall receive a list of the team members.~~

~~D. At least 10 days prior to the scheduled audit,~~ C. The audit team leader shall provide the program or facility administrator with a list of audit team members as soon as practicable, but no later than 10 [business] days before the scheduled certification audit. Upon notification of the audit team members, the program or facility administrator may~~, for just cause,~~ request that one or more members of the audit team be replaced. Every reasonable effort will be made to comply with the request. Any subsequent addition or substitution of the audit team members shall be communicated to the program or facility administrator as soon as practicable and may be made subject to the mutual agreement of the audit team leader and program or facility administrator.

~~E. In instances where several programs are operated under the administration of a single commission, the certification team and the program administrator may agree to an administrative review audit.~~

6VAC35-20-60. Monitoring ~~visits~~ of programs and facilities.

A. All ~~state and local~~ programs or facilities subject to ~~standards~~ regulations issued by the ~~Board of Juvenile Justice~~ board shall be subject to periodic, scheduled monitoring visits~~, scheduled and~~ or monitoring reviews conducted in accordance with ~~written~~ department procedures. ~~Whenever deemed necessary, the board may require that a monitoring visit be conducted of any program.~~

B. The department shall annually ~~submit to the board~~ develop a plan for monitoring programs and facilities subject to certification audits, which shall provide for at least the following:

1. All ~~residential programs, court service units and offices on youth that are currently receiving state funding~~ programs and facilities that are subject to certification audits shall receive at least one ~~announced~~ scheduled monitoring visit per year. A certification audit ~~may~~ shall

satisfy the requirement of a scheduled monitoring visit. ~~In addition, all residential programs and court service units shall receive at least one unannounced monitoring visit per year.~~

2. ~~All nonresidential programs established under the Virginia Juvenile Community Crime Control Act (Article 12.1 of Title 16.1 of the Code of Virginia) shall be reviewed at least once every two years to determine compliance with the approved local plans and standards promulgated by the board.~~ Additional monitoring visits or monitoring reviews may be conducted at the request of the board, department, or program or facility administrator.

~~3. Individual nonresidential programs shall receive monitoring visits according to the department's annual plan, which may provide for random sampling of programs in various categories. However, during each calendar year at least one nonresidential program in each Virginia Juvenile Community Crime Control Act (VJCCCA) plan shall receive a monitoring visit.~~

6VAC35-20-61. Self-audit of programs and facilities subject to certification audits.

A. All programs and facilities subject to certification audits shall, in accordance with [~~department procedures~~ the department's Guidance Document: Self-Audits/Evaluations, September 2013], conduct, except in the year the program or facility is subject to a certification audit, an annual self-audit for compliance with applicable regulatory requirements.

B. The self-audit reports shall be made available during the certification audit.

6VAC35-20-63. ~~Reports of monitoring visits.~~ (Repealed.)

~~The department shall report to the board in writing any significant deficiencies identified through monitoring visits or other means when a program has failed to take needed corrective action.~~

6VAC35-20-65. ~~Reports required of life, health and safety violations.~~ (Repealed.)

~~A. Whenever department personnel become aware of a life, health or safety violation, the department shall take immediate action to correct the situation if the program has not already done so. Such action may include but is not limited to reporting the situation to Child Protective Services, the State Police, or other enforcement authorities as appropriate, administrative probation, removal of residents or suspension of finding. The department shall report to the board no later than its next regularly scheduled meeting: (i) the nature and scope of the violation, and (ii) the action taken by the department or the program to correct the deficiency.~~

~~B. When a life, health or safety violation has not been adequately corrected, the board may take certification action up to and potentially including decertification.~~

6VAC35-20-67. ~~Disputes of noncompliance findings.~~ (Repealed.)

~~Any program that is cited for noncompliance with board-approved standards, policies or local VJCCCA plan may:~~

~~1. Request a variance in accordance with 6VAC35-20-92; or~~

~~2. Appeal the finding, in writing, within 10 days of receiving notice of the finding, in accordance with department procedures and 6VAC35-20-94.~~

6VAC35-20-69. ~~New~~ Newly opened facilities and new construction, expansion, or renovation of residential ~~programs~~ facilities.

A. When a newly opened facility seeks certification to allow the admission of residents, the facility administrator shall contact the director or designee to request a review of the facility for conditional certification.

B. The facility administrator and the department shall follow the requirements of this chapter and department procedures in reviewing a facility prior to admission of residents. New construction, expansions, and renovations in all juvenile residential ~~programs~~ facilities, whether or not the facility or its sponsor is seeking reimbursement for construction or operations, shall conform to ~~applicable~~ the governing provisions ~~in~~ of the ~~board's Regulations for Local Juvenile Residential Facility Construction and Reimbursement of Local Construction Costs (6VAC35-30), and Standards for Interagency Regulation of Children's Residential Facilities (22VAC42-10). In addition, the department shall consider the facility's degree of compliance with the Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities.~~ following regulations [~~and any applicable guidance documents related thereto~~]:

1. Regulation Governing Juvenile Correctional Centers (6VAC35-71);

2. Regulation Governing Juvenile Secure Detention Centers (6VAC35-101);

3. Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); and

4. Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30).

~~B. The department shall not approve the housing of juveniles in a newly opened facility if the facility does not meet the requirements for a conditional certification as provided in 6VAC35-20-100.~~

~~C. The department shall not approve the housing of juveniles in any portion of a facility that has been modified through expansion or renovation, until designated department staff visit the facility and verify that:~~

~~1. The facility or applicable portion thereof complies with all applicable mandatory standards and physical plant standards; and~~

~~2. The current certification issued by the board is appropriate to the status of its program and construction.~~

C. A newly constructed, expanded, or renovated facility shall, except as provided in subsection D of this section, obtain conditional certification as provided in 6VAC35-20-100 prior to the placement of residents in the new facility or portion of an existing facility subject to the expansion or renovation.

D. The director or designee shall consider the request for certification within 60 days of receiving the request and report of the basic audit findings. Actions taken by the director or designee shall be governed by the provisions of 6VAC35-20-100.

6VAC35-20-75. Certification of individual programs or facilities.

A. The ~~board~~ director or designee shall [~~individually~~] certify [~~all~~ each] (i) juvenile residential [~~facilities,~~ facility] and (ii) court service [~~units~~ unit] ~~and offices on youth that are currently receiving state funding~~.

~~B. The department shall schedule and conduct certification audits in sufficient time for the board to take action on the audit report before a program's current certification expires. The department shall publish procedures for naming audit team members, conducting on-site audits, determining compliance, conducting exit interviews, reviewing and approving corrective plans of action, and instructing programs how to request variances or appeal findings.~~

~~C. Upon the completion of the audit, the certification audit findings shall be reported to the program's administrator and sponsor and to appropriate department personnel. The program administrator or sponsor may appeal any of the certification audit findings in accordance with department procedures that shall specify (i) the timeframes for filing the appeal and for the department's response; and (ii) the department personnel responsible for considering the appeal.~~

~~D. Appeals of audit findings that cannot be resolved by the department shall be forwarded to the board for resolution as provided in 6VAC35-20-94.~~

~~E. Designated department personnel shall review and approve plans of action to address deficiencies identified in the audit report, and summaries of the approved plans of action shall be forwarded to the board along with the audit report.~~

~~F. Requests for variances shall be forwarded to the board along with the department's recommendation to approve or disapprove the variance.~~

B. The director or designee may extend a current certification for a specified period of time pending a certification audit and the completion of an administrative review, provided the department is not aware of any health, welfare, or safety violations.

C. If a program's or facility's certification expires prior to the director's or designee's consideration of the certification audit report, the program's or facility's current certification status shall continue in effect until the director or designee takes certification action.

D. The director or designee may, upon the request of a program or facility administrator or the department, modify during the term of the certificate the conditions of a certificate relating to a program's or facility's certification status or capacity, the residents' age range or sex, the facility's location, or changes in the services offered and provided.

E. A certificate is not transferrable and automatically expires when there is a change of ownership or sponsorship of the program or facility.

F. When the program or facility ceases to operate, the program or facility administrator shall return the certificate to the director or designee. The department shall notify the board of the change in the program's or facility's status.

6VAC35-20-80. ~~On-site~~ Certification audit procedures.

A. ~~The burden of providing proof of compliance with standards rests with the program staff. Documentation created once the audit has begun shall not be accepted.~~ The program or facility shall demonstrate [~~substantial~~] compliance as required in this chapter [~~and by any applicable guidance documents that require~~] that the program or facility [~~have~~ has] no areas of noncompliance that pose an immediate and direct danger to residents.

B. The audit team shall (i) visit the program or facility and (ii) review and examine sufficient documentation to adequately render a determination of compliance as provided for in 6VAC35-20-85.

1. The burden of providing proof of compliance with regulatory requirements rests with the program or facility staff.

2. A program or facility with an approved variance or waiver shall provide such documentation to the certification audit team.

~~B.~~ 3. It is permissible to provide additional documentation should the certification team request it; however, such documentation must already exist when the audit begins. ~~Once the audit is concluded, any changes made by an agency will not change the compliance determination for a given standard but instead become part of the program's plan of action.~~

4. Compliance [~~documentation~~] shall be [~~collected~~ determined] through documentation, interview, and observation.

6VAC35-20-85. Determining compliance with individual regulatory requirements.

A. During the audit process, the department shall determine whether the program or facility is compliant with each regulatory requirement. To be found in compliance, the following shall be shown:

1. The program or facility shall:

a. For critical regulatory requirements, demonstrate 100% compliance;

b. For noncritical regulatory requirements with multiple elements, the certification audit team will make a determination of compliance as [~~indicated in the applicable compliance document~~ provided in department procedures] that shall require (i) an acceptable percentage of compliance with the [~~provision and~~ entire regulatory requirement or] (ii) [~~an absence of any systemic noncompliance in~~] any single element; or

c. For all noncritical regulatory requirements, demonstrate an acceptable percentage compliance as provided [~~for in the applicable guidance document~~ in department procedures].

2. The program or facility shall not have:

a. Any circumstance or condition constituting a pattern of action that presents a concern for the health, welfare, or safety of the residents, program participants, or staff; or

b. Any circumstance or condition that presents an immediate threat to the health, welfare, or safety of the residents, program participants, or staff.

B. The determination of noncompliance shall be a decision made by the entire certification team [~~in accordance with the applicable guidance document~~].

C. For purposes of calculating percentage of compliance, the determination of what constitutes individual regulatory requirements [~~(i.e., (e.g., ~~] section, subsection, subdivision, or element in a list in the regulatory chapter) will be specified [~~in the applicable guidance document~~ as provided in department procedures].

6VAC35-20-90. Certification audit ~~reports~~ findings.

A. Upon the completion of the audit, the certification audit findings shall be discussed with the program's or facility's administrator or designee.

~~A.~~ B. A written report of the ~~team's~~ findings from the certification audit shall be submitted ~~to the program administrator,~~ within 10 ~~working~~ business days following the ~~compliance~~ certification audit, to (i) the program or facility administrator [and] (ii) [~~the supervisory or governing authority over the program or facility administrator, and (iii) to~~] the director or designee. Any finding of noncompliance with a regulatory requirement shall be documented.

~~B. The program administrator shall develop a plan of action to correct all noncompliance findings. The plan of action shall be submitted to the department personnel as designated in department procedures within 15 days of receipt of the report of the team's findings. In exceptional situations, the designated department personnel may grant a 30-day extension to a program administrator for the development of an action plan.~~ C. Any program or facility that is cited for noncompliance with a regulatory requirement may within 10 business days of receiving the written report of the findings for the certification audit:

1. Request in writing a variance in accordance with 6VAC35-20-92; or

2. Appeal the finding of noncompliance in writing and in accordance with department procedures and 6VAC35-20-94.

~~C. The department shall issue guidelines, including timeframes, that provide a process for reviewing and approving plans of corrective action, including those that are initially deemed unacceptable and in need of refinement, in time for the plans to be included in the audit report to the board. If an acceptable plan of action is not submitted within the required time frame, the director or designee shall refer the matter to the board for action.~~

~~D. Each certification audit report submitted to the board shall contain:~~

~~1. The program's name, administrator, sponsor, location and purpose;~~

~~2. A summary of the program's target audience, its relation to other entities in the community and in the juvenile justice system, and other information relevant to its operation;~~

~~3. The date of the certification audit and the names of the audit team members;~~

~~4. Notation of all standards and policies for which noncompliance was found, including especially notation of any life, health or safety violations; a brief description of the circumstances, including extenuating and aggravating factors; and supplemented, when appropriate, with photographic evidence or other documentation; and~~

~~5. For each deficiency cited, a plan of corrective action that states:~~

~~a. The action taken or required to correct the deficiency and prevent its recurrence;~~

~~b. The person or agency responsible for the action; and~~

~~c. The deadline for taking the action.~~

6VAC35-20-91. Corrective action plans and certification audit reports.

A. For each finding of noncompliance, the program or facility administrator shall develop a corrective action plan.

1. The corrective action plan shall be submitted to the department within 30 [calendar] days of receipt of the written certification audit findings. For good cause, the department may grant a 30- [calendar] day extension to a program or facility administrator for the development of the corrective action plan.

2. The department shall issue guidelines that provide for (i) the format [~~. (ii) any content not currently required by this section,~~] and [~~(iii)~~ (ii)] the process for the department's review and approval of corrective action plans.

3. The corrective action plan shall include the following:

a. A description of any extenuating or aggravating factors contributing to the noncompliant circumstances or conditions;

b. A description of each corrective action required or tasks required to correct the deficiency and prevent its recurrence;

c. The actual or proposed date of task completion; and

d. The identification of the person responsible for oversight of each element of the implementation of the corrective action plan.

If the corrective action proposed by the program or facility involves a request for a variance in accordance with 6VAC35-20-92, the corrective action plan must also state what action will be taken to meet or attempt to meet the regulatory requirement should the request for the variance be denied.

4. The program or facility administrator shall be responsible for developing and implementing a written corrective action plan.

5. If a finding of noncompliance results in a request for an appeal of the finding of noncompliance or a variance, documentation of the request for a variance or of the appeal of the finding of noncompliance should be attached to the corrective action plan.

B. Each certification audit report submitted to the director or designee shall contain:

1. The program's or facility's name, administrator, and location;

2. A summary of the program's or facility's population served, programs, and services provided;

3. The date of the certification audit and the names of the audit team leader and members; and

4. Notation of all regulatory requirements for which there was a finding of noncompliance as provided for in 6VAC35-20-85.

If there is a finding of noncompliance with a regulatory requirement, the report shall describe the noncompliance and incorporate the program's or facility's corrective action plan for each area of noncompliance. If a program or facility administrator fails to submit a corrective action plan within the time specified, the certification audit report, [~~with audit team recommendations.~~] shall be submitted to the director or designee for consideration.

C. The program or facility administrator shall submit to the audit team leader, upon completion of the corrective action plan, documentation confirming all corrective actions have been fully executed.

6VAC35-20-92. Variance request.

A. Any request for a variance must be submitted in writing ~~and~~. If the request is submitted subsequent to a finding of noncompliance in a certification audit, the request must be submitted within 10 [business] days of receiving the written report of the findings from the certification audit. All requests shall include:

1. The ~~nonmandatory standard~~ noncritical regulatory requirement for which a variance is requested;

2. The justification for the request;

3. Any actions taken to come into compliance;

4. The person ~~and agency~~ responsible for such action;

5. The date at which time compliance is expected; and

6. The specific time period requested for this variance~~; and~~.

~~7. A draft plan of corrective action describing how the program would meet the standard should the variance not be granted.~~

~~The department's recommendation to the board as to the certification action to be taken shall address each of the program's variance requests.~~

B. Documentation of any variance requests stemming from a finding of noncompliance in a certification audit shall be submitted along with the corrective action plan for correcting any deficiencies cited during the certification audit as provided for in 6VAC35-20-91.

C. A requested variance shall not be implemented prior to obtaining the approval of the board.

D. Requests for variances shall be placed on the agenda for consideration at the next regularly scheduled board meeting. [~~The requested variance shall be accompanied by the department's recommendation to approve or disapprove the variance.~~]

E. In issuing variances, the board shall specify the scope and duration of the variance.

6VAC35-20-93. Waivers.

A. When a program or facility has submitted a formal variance request to the board concerning a ~~nonmandatory standard~~ noncritical regulatory requirement, the director may, but is not required to, grant a waiver temporarily excusing a program or facility from meeting the requirements of the ~~standard~~ regulation when (i) the ~~standard~~ regulatory requirement is not required by statute or by federal or state regulations other than those issued by the board ~~of juvenile justice~~; (ii) noncompliance with the ~~standard~~ regulatory requirement will not result in a threat to the ~~life,~~ health, welfare, or safety of residents, the community, or staff; (iii) enforcement will create an undue hardship; and (iv) juveniles' care or services would not be adversely affected.

B. A waiver shall be granted only when the program or facility is presented with emergency conditions or circumstances making compliance with the regulatory requirement either impossible or impractical.

C. The waiver shall be in effect only until such time as the board acts on the variance request. The board will act on the matter at its first meeting following notice from the

~~department~~ director or designee that a waiver has been granted.

~~C.~~ D. The director or designee shall promptly notify the board [chair] ~~by first-class mail~~ [in writing] of waivers granted~~,~~ and the rationale for so ~~doing~~ granting.

~~D.~~ E. A program or facility will not be cited for noncompliance with the requirements of a ~~standard~~ regulatory requirement subject to a waiver during the time it operates pursuant to a waiver approved by the director or designee.

6VAC35-20-94. Appeal process for a finding of noncompliance [~~with an individual regulatory requirement~~].

~~If an appeal of any audit findings is being made, the program administrator shall attach the appeal request to any plan of action and submit the appeal to department personnel as designated in agency procedures within 15 days of written notification of the audit findings.~~

A. A program or facility administrator may appeal a finding of noncompliance of an audit by submitting the appeal to the director or designee within 10 [business] days of the [receipt of] written notification of the audit findings.

~~Department staff as designated in agency procedures~~ B. The manager for the certification team or designee shall contact the program or facility administrator and make every effort to resolve the appeal ~~with the program administrator~~ within ~~15~~ 10 [business] days of ~~receiving the appeal~~ receipt of the appeal. ~~If the program administrator is not satisfied, he may submit a written request to department staff as designated in department procedures within five days to have the matter reviewed by the Board of Juvenile Justice at its next scheduled meeting. The matter will be placed on the board's agenda pursuant to timeframes adopted by the board for submission of agenda items.~~

C. If department personnel and the program or facility administrator are not able to informally resolve the issue on appeal, the request for an appeal shall be forwarded by the manager for the certification team or designee as soon as practicable to the director or designee.

1. The director or designee shall issue a decision on the appeal within 15 business days of receipt.

2. The program or facility administrator shall be informed as soon as practicable, but no later than the end of the next business day, of the director's or designee's decision.

D. If the appealed finding of noncompliance remains unresolved after exhaustion of the informal review and appeal to the director [or] designee, the program or facility administrator may appeal the director's or designee's decision to the board. Upon request, the department shall place the appealed finding of noncompliance on the board's agenda for consideration at its next regularly scheduled meeting.

E. If the appeal is granted [and the finding overruled], the finding of noncompliance shall be removed from the certification audit report.

F. An appeal pursuant to this section does not negate the requirement to submit a corrective action plan, as required by 6VAC35-20-91, on the disputed regulatory requirement.

6VAC35-20-100. ~~Board certification~~ Certification action.

~~A. The board may extend a current certification for a specified period of time, pending a certification audit and the completion of administrative reviews, provided the program meets all mandatory standards and the board and the department are not aware of any life, health or safety violations.~~

~~B. If a program's certification expires during a period when the board does not meet, the program's current certification status shall continue in effect until the board meets and takes certification action.~~

~~C. Once the board takes certification action, the board will issue a certificate or letter clearly identifying the program, the certification status, and the period of time during which the certification will be effective unless the certificate is revoked or surrendered sooner.~~

~~D. For purposes of calculating percentage of compliance, a standard will be identified either as a section of the Virginia Administrative Code or a subsection identified by an uppercase letter (A, B, C, etc.). Thus, whenever a section of a 6VAC35 regulation contains one or more subsections, each subsection constitutes a distinct standard. Subdivisions (identified by numerals (1, 2, 3, etc.) or lower case letters (a, b, c, etc.) are not separate standards but are elements of the standard. When any element a, b, c or 1, 2, 3 is not met, the standard in which it appears is not met.~~

~~E. A Conditional Certification for up to six months will be issued to a new program that:~~

~~1. Demonstrates 100% compliance with all mandatory standards;~~

~~2. Demonstrates at least 90% compliance with all nonmandatory standards;~~

~~3. Has acceptable plans of action for all noncompliances; and~~

~~4. Has no unresolved life, health or safety violations.~~

~~F. A One-year Certification will be issued when a program currently holds a Conditional Certification, a One Year Certification, or a Three-Year Certification, and:~~

~~1. Is in 100 % compliance with all mandatory standards;~~

~~2. Demonstrates at least 90% compliance with all other standards;~~

~~3. Has acceptable plans of action for all noncompliance;~~

~~4. Has no unresolved life, health or safety violations; and~~

~~5. Has no more than one systemic deficiency.~~

~~G. A Three-year Certification will be issued when a program currently holds a One-year Certification or a Three-year Certification and the program:~~

~~1. Is in 100% compliance with all mandatory standards;~~

~~2. Demonstrates at least 95% compliance with all other standards;~~

~~3. Has acceptable plans of action for all noncompliance;~~

~~4. Has no unresolved life, health or safety violations; and~~

~~5. Has no systemic deficiencies.~~

~~H. Any program, in any certification status, will be placed on probation for up to six months when the program:~~

~~1. Is in less than 100% compliance with all mandatory standards but has acceptable plans of action to address deficiencies;~~

~~2. Demonstrates less than 90% compliance with all other standards;~~

~~3. Does not have acceptable plans of action for all noncompliance;~~

~~4. Has one or more unresolved life, health or safety violations; or~~

~~5. Has two or more systemic deficiencies.~~

~~I. Any program, regardless of current certification status, will be decertified or denied certification when:~~

~~1. The program is in less than 100% compliance with all mandatory standards without acceptable plans of action to address deficiencies;~~

~~2. The program demonstrates less than 90% compliance with all other standards and does not have acceptable plans of action to address deficiencies;~~

~~3. The program, if on probation or administrative probation, has not corrected the circumstances that were cited in placing the program on probation or administrative probation to the point that the program would qualify for at least conditional certification; or~~

~~4. The program's staff have (i) committed, permitted, aided or abetted any illegal act in the program; or (ii) violated child abuse or neglect laws; or (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the board; or (iv) failed to correct any such deviations within the time specified by the board; or (v) falsified records.~~

A. The department shall notify the program or facility administrator of [~~(i)~~] the date, time, and location the director or designee will take certification action relating to the program's or facility's certification audit [~~and (ii) any recommendation of the audit team regarding the program's or facility's certification status.~~] The program or facility administrator shall have the right to appear in person or by counsel or other qualified representative when the director or designee considers the audit report and makes a certification decision. [The program or facility administrator shall be provided notice of the right to appear 10 business days prior to the director's or designee's consideration of the audit report and final certification determination.]

B. A conditional certification for up to six months will be issued to a new program or a newly opened facility that:

1. Demonstrates 100% compliance with (i) all critical regulatory requirements and (ii) any physical plant regulatory requirements;

2. Demonstrates at least 90% compliance with all noncritical regulatory requirements [and has an acceptable corrective action plan]; [and]

[3. ~~Has acceptable corrective action plans for all noncompliances; and~~

~~4.~~ 3.] Has no unresolved health, welfare, or safety violations.

C. Upon review of the audit findings and any acceptable corrective action plans, the director or designee [~~may~~ shall] take the following certification actions:

1. If the certification audit finds the program or facility in [~~(i)~~] 100% compliance with all regulatory requirements [~~or (ii) less than 100% with a corrective action plan demonstrating the program or facility is in 100% compliance~~], the director or designee shall certify the facility for three years.

2. If the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and [~~there (i) are no health, welfare, or safety violations and (ii) is an acceptable corrective action plan for any finding of deficiency~~ a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements], the director or designee shall certify the facility for a specific period of time, up to three years.

3. If the certification audit finds the program or facility in less than 100% compliance with all [critical] regulatory requirements [~~and there is a health, welfare, or safety violation with an acceptable corrective action plan for any finding of deficiency, the director or designee shall continue the program's or facility's current certification for a specific period of time, with a status report to be provided within a specified period of time, not to exceed six months.~~ or less than 90% on all noncritical regulatory requirements or both, and a subsequent status report, completed prior to the certification action, finds 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years.]

[~~a. If the status report indicates no continued areas of noncompliance, the director or designee shall certify the facility for up to three years, subject to the provisions of subdivision C 7 of this section.~~

~~b. If the status report indicates any continued area of noncompliance, none of which is a health, welfare, or safety violation, the director or designee shall continue the program's or facility's certification with a status~~

~~report required within a specific period of time, not to exceed six months.~~

~~(1) If the status report indicates no continued areas of noncompliance, the director or designee shall certify the program or facility for up to three years, subject to the provisions of subdivision C 7 of this section.~~

~~(2) If any area of noncompliance continues thereafter, the program or facility shall be placed on probationary certification status, subject to the applicable provisions of subdivision C 5 of this section.~~

~~c. If the status report indicates any continued area of noncompliance, any of which are health, welfare, or safety violations, the director or designee shall place the program or facility on probationary certification status, subject to the provisions of subdivision C 5 of this section.~~

~~4. If the certification audit finds the program or facility in less than 100% compliance and there are health, welfare, or safety violations without an acceptable corrective action plan for any finding of deficiency, the director or designee shall place the program or facility on probationary certification status, subject to the provisions of subdivision C 5 of this section.~~

4. If the certification audit finds the program or facility in less than 100% compliance with all critical regulatory requirements or less than 90% on all noncritical regulatory requirements or both, and a subsequent status report, completed prior to the certification action, finds less than 100% compliance on all critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements or both, the program or facility shall be subject to the following actions:

a. If there is an acceptable corrective action plan and no conditions or practices exist in the program or facility that pose an immediate and substantial threat to the health, welfare, or safety of the residents, the program's or facility's certification shall be continued for a specified period of time up to one year with a status report completed for review prior to the extension of the certification period.

(1) If the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years, retroactive to the date upon which the prior certification was scheduled to expire.

(2) If the status report results find that the program or facility continues to be at less than 100% compliance on the critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements, the program or facility shall be placed on probationary certification status for a specified period of time, up to one year.

b. If there is not an acceptable corrective action plan or there is a health, welfare, or safety violation or both, the program or facility shall be placed on probationary certification status for a specified period of time up to one year or decertified.

5. Whenever a program or facility is placed on probationary certification status, a status report shall be completed prior to the expiration of the probationary certification period.

a. If the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years retroactive to the date upon which the prior certification was scheduled to expire.

b. If the status report results find the program or facility continues to be at less than 100% compliance on the critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements, the program or facility shall be decertified.

~~5.~~ 6.] When a program or facility is placed on probationary certification status, (i) the director or designee shall, taking into account the program's or facility's history of compliance with regulatory requirements, specify the duration of the probationary certification status and (ii) the department and program or facility shall provide a status report to the board at all meetings for the duration of this status.

a. If the status report indicates no continued areas of noncompliance, the director or designee shall certify the facility for up to three years, subject to the provisions of subdivision [~~C 7~~ 8] of this [~~section~~ subsection].

b. If any area of noncompliance continues thereafter, the director or designee may (i) continue the probationary certification status, (ii) decertify the program or facility as provided for in 6VAC35-20-120, or (iii) take any other action provided for by law.

[~~6.~~ 7.] If the certification audit report indicates an immediate threat to the health, welfare, or safety to the residents of a facility, notwithstanding the foregoing provisions, the director or designee may decertify the program or facility as provided for in subsection [~~E~~ D] of this section and 6VAC35-20-120 or take any other action provided for by law.

[~~7.~~ 8.] If a program's or facility's certification status is continued after the initial period expires, the subsequent certification will be retroactive to the date of expiration, unless the director or designee specifically issues a certification with different terms.

[~~D. The director or designee may, at any time, change a program's or facility's certification status upon notification of any noncompliance with any regulatory requirements.~~

~~E.~~ D.] Any program or facility, regardless of current certification status, may be decertified or denied certification when:

1. The program or facility has an unacceptable level of compliance [,] as provided in [~~the applicable guidance document~~ department procedures,] with applicable regulatory requirements without acceptable corrective action plans to address deficiencies;

2. The program or facility, if on probation or administrative probation, has not corrected the circumstances that were cited in placing the program or facility on probation or administrative probation to the point that the program or facility would qualify for at least conditional certification;

3. The program's or facility's staff have [knowingly] (i) committed, permitted, aided or abetted any illegal act in the program or facility [resulting in a criminal conviction]; (ii) violated child abuse or neglect laws; (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the director or designee; (iv) failed to correct any such deviations within the time specified by the director or designee; or (v) falsified records [, and the facility administrators knew or should have known and have failed (i) to report the actions and (ii) to take immediate remediating actions]; or

4. If the program or facility fails to adequately correct the health, welfare, or safety violation per 6VAC35-20-36.1.

[~~F.~~ E. Certification decisions may be issued outside the requirements of subsections C and D of this section under the following circumstances:

1. The director may consider any aggravating and mitigating circumstances affecting the facts resulting in any finding of noncompliance, including, but not limited to, the history of the facility and the ability of the facility to predict and control the conditions resulting in the noncompliance. In such circumstances, the director may operate outside the requirements of subsection C of this section.

2. When considering whether to place a facility on probationary certification status or to decertify a program or facility due to a finding of noncompliance on a critical regulatory requirement, the director may consider whether the facility (i) had control over and knowledge of the circumstances, behaviors, or conditions leading to the finding and (ii) took appropriate steps to immediately rectify the situation. In such cases, the director may continue the certification in lieu of taking those actions.

F.] Once the director or designee takes certification action, the department shall issue a certificate or letter clearly identifying the program or facility, the certification status, and the period of time during which the certification will be effective unless the certificate is revoked or surrendered sooner. The program or facility administrator shall be informed, briefly and generally, of the factual or procedural basis when any program or facility is issued a probationary certification or is decertified.

G. A program's or facility's status shall remain in effect until subsequent action by the director or designee.

6VAC35-20-110. Notice of ~~board~~ certification action.

~~A.~~ Within two weeks of any certification action, ~~a designated officer or agent of the board~~ the director or designee shall send ~~formal~~ notice of the ~~board~~ certification action to:

1. The program or facility administrator;

2. The program's ~~sponsoring locality, commission or private operator, as applicable~~ or facility's supervisory or governing authority; and

~~3. Designated department personnel; and~~

~~4.~~ 3. Other state and local authorities, as appropriate to the specific circumstances.

~~B. The program shall post the certificate or letter issued by the board in a conspicuous place in the facility or program offices where it is visible to the public.~~

~~C. All variances approved by the board shall be made available at the program site to certification audit teams and department personnel conducting on-site visits.~~

6VAC35-20-115. Board review of programs and facilities found in noncompliance.

A. When a program or facility is found in noncompliance with one or more regulatory requirements, the audit report with a statement of the director's or designee's certification action taken shall be placed on the agenda at the next regularly scheduled board meeting for oversight and review. The department shall provide the program or facility administrator with notice of the date and time of the board meeting.

B. Whenever a facility is found in noncompliance with one or more regulatory requirements, the board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting or limiting the placement of children in the program or facility or take any other action provided by law. In addition to the reports required by this section and 6VAC35-20-100, the board may request the department or the program or facility administrator to provide a status update or report at subsequent board meetings.

6VAC35-20-120. Actions following decertification or denial of certification.

A. When a program or facility operated by the department is decertified or denied certification, ~~the program administrator will take whatever actions are necessary to qualify the program for at least a conditional certification within 90 days.~~

~~If the program does not qualify for at least conditional certification within 90 days,~~ the department [shall take remedial action and] may choose to close the program or facility or relocate the residents. ~~The procedure for such action shall be in compliance with all board, department, state and federal regulations, policies, or requirements of law. If after 90 days the program has not met the requirements for at least conditional certification and the department has not closed the program, the board shall recommend to the Governor and the Secretary of Public Safety appropriate action to be taken under the circumstances.~~

1. A report shall be sent to the board within 90 [calendar] days after the decertification or denial detailing the actions taken by the department to (i) bring the program or facility into compliance with all regulatory requirements and (ii) protect the health, welfare, or safety of the residents.

2. If after 90 [calendar] days the program or facility has not met the requirements for at least conditional certification and the department has not closed the program or facility, the board shall recommend to the Governor and the Secretary of Public Safety appropriate action to be taken under the circumstances.

B. When a program or facility that is locally, regionally, or privately operated is decertified or denied certification, the board and the department may take any and all of the following actions as appropriate to the circumstances:

1. The [~~sponsor~~ facility supervisory and the governing authority] may be required to reorganize the program structure or take necessary personnel action or any other steps as may be necessary to qualify the program or facility for at least a conditional certification within 90 [calendar] days~~; and~~.

2. The ~~Director of the Department~~ director or designee may, as applicable, reduce or suspend funding to the program or facility in accordance with §§ 16.1-322.1, ~~§~~ 16.1-309.9 C, or ~~§~~ 66-30 of the Code of Virginia or may withdraw the approval required by § 16.1-249 A (3) and (4) of the Code of Virginia~~; and~~.

3. The board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting or limiting the placement of children in the program or facility.

4. The department [~~may~~ shall] not utilize facilities [for residential placements] that are decertified or denied certification.

6VAC35-20-150. ~~Mandatory standards~~ Critical regulatory requirements for juvenile residential facilities.

~~The following standards, selected from Standards for Juvenile Residential Facilities (6VAC35-140) and Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42), are designated as "mandatory" as defined in 6VAC35-20-10. Programs that are subject to these standards must be in 100% compliance with the following standards in order to be approved to operate. Failure to comply with these mandatory standards will result in enforcement actions in accordance with the Code of Virginia and as set forth in this chapter.~~

~~1. 6VAC35-140-190~~

~~2. 6VAC35-140-340~~

~~3. 6VAC35-140-460~~

~~4. 6VAC35-140-660~~

~~5. 6VAC35-140-680~~

~~6. 6VAC35-140-690~~

~~7. 22VAC42-10-190~~

~~8. 22VAC42-10-300~~

~~9. 22VAC42-10-330 A, B and E~~

~~10. 22VAC42-10-490 B and C~~

~~11. 22VAC42-10-700 A and B~~

~~12. 22VAC42-10-710 B through I~~

~~13. 22VAC42-10-720~~

~~14. 22VAC42-10-730 A and C~~

~~15. 22VAC42-10-800~~

~~16. 22VAC42-10-960 C and D~~

~~17. 22VAC42-10-970~~

~~18. 22VAC42-10-1000.~~

[~~The board shall designate which regulatory requirements will be defined as critical regulatory requirements.~~

A. The board has the sole authority for designating critical regulatory requirements. The board shall identify the designated critical regulatory requirements at the first board meeting after the final regulation is published in the Virginia Register.

B. The designated critical regulatory requirements may be amended by a majority of the board at a regularly scheduled board meeting only when (i) the proposed change was raised at a board meeting but not voted upon and a date for final consideration and voting is set at that meeting; (ii) notice of the proposed change is posted with the notice of board meeting designated for discussion and voting; (iii) consideration of the change is placed on the board meeting agenda at which a vote is anticipated; and (iii) written notice is provided to the facility administrators prior to the board meeting at which the vote is anticipated.

C. A request to review the critical regulatory requirements can be made by any person at any time.

D. The list of designated critical regulatory requirements shall be posted on the department's website at http://www.djj.virginia.gov.]

Part ~~3~~ III

VJCCCA Programs and Offices on Youth Program Audits

6VAC35-20-200. Monitoring of VJCCCA programs or offices on youth.

The department shall develop a schedule for monitoring all VJCCCA programs or offices on youth that shall provide for at least one scheduled on-site VJCCCA program or office on youth audit every two years. Whenever deemed necessary or appropriate, additional monitoring visits or reviews may be [~~schdduled~~ scheduled].

6VAC35-20-210. VJCCCA programs and offices on youth self-evaluations.

A. All VJCCCA programs and offices on youth shall, in accordance with department procedures or manuals, do the following:

1. Conduct an annual self-evaluation; and

2. Provide the department with a written summary of (i) the self-evaluation process and (ii) the findings of the self-evaluation.

B. The department shall schedule each VJCCCA program or office on youth to conduct the self-evaluation and complete the report.

C. The department shall review each VJCCCA program's or office on youth's self-evaluation report and provide feedback to the VJCCCA program [~~of~~ or] office on youth.

6VAC35-20-220. VJCCCA program and office on youth audits.

A. During the program audit, the VJCCCA program or office on youth shall demonstrate an acceptable level of compliance, as provided in this chapter, with all (i) statutory requirements; (ii) the approved local plan; (iii) applicable regulatory requirements; and (iv) applicable department procedures or manuals.

B. The burden of proving compliance with the applicable requirements rests with the program staff.

C. Any finding of noncompliance shall be documented.

6VAC35-20-230. VJCCCA program and office on youth audit findings.

A. Upon completion of the VJCCCA program or office on youth audit, the VJCCCA program or office on youth audit findings shall be reported to the VJCCCA program plan contact or office on youth program director along with a copy to the individual with supervisory authority over that individual.

B. The VJCCCA program plan contact or office on youth program director may appeal the VJCCCA program or office on youth audit findings to the director or designee.

C. The department will monitor the progress of the VJCCCA program or office on youth in correcting the identified noncompliance through subsequent documentation and monitoring visits.

6VAC35-20-240. Effect of VJCCCA program or office on youth noncompliance.

A. If the department determines that a VJCCCA program or office on youth is not in [~~substantial~~] compliance, it may suspend all or any portion of the VJCCCA program's or office on youth's funding until there is compliance as provided in subsection C of § 16.1-309.9 of the Code of Virginia.

B. The department shall notify the person responsible for the daily administration of the VJCCCA program or office on youth of the intent to withhold funding prior to such withholding. The notification shall include the justification for the intended withholding and any corrective actions the VJCCCA program or office on youth must complete.

C. The VJCCCA program or office on youth may appeal to the director or designee the withholding of funding, in writing, within 10 business days of receiving notice of the department's intent to withhold the funding.

[DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-20)

Guidance Document: Self-Audits/Evaluations, September 2013, Department of Juvenile Justice]

VA.R. Doc. No. R10-2208; Filed August 7, 2013, 9:52 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC5-40. Existing Stationary Sources (Rev. J07) (amending 9VAC5-40-6970, 9VAC5-40-7050; adding 9VAC5-40-6975).**

9VAC5-45. Consumer and Commercial Products (Rev. J07) (amending 9VAC5-45-60, 9VAC5-45-70, 9VAC5-45-90, 9VAC5-45-160, 9VAC5-45-170, 9VAC5-45-190, 9VAC5-45-200, 9VAC5-45-240, 9VAC5-45-280, 9VAC5-45-310, 9VAC5-45-320, 9VAC5-45-390, 9VAC5-45-400, 9VAC5-45-420, 9VAC5-45-430, 9VAC5-45-440, 9VAC5-45-460, 9VAC5-45-480, 9VAC5-45-510, 9VAC5-45-520, 9VAC5-45-530, 9VAC5-45-580, 9VAC5-45-620, 9VAC5-45-630, 9VAC5-45-640, 9VAC5-45-650, 9VAC5-45-700, 9VAC5-45-710).

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

Effective Date: October 1, 2013.

Agency Contact: Gary Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Background:

A new chapter (9VAC5-45, Consumer and Commercial Products) was originally proposed as part of this

regulatory action, consisting of general requirements and seven articles to control volatile organic compound (VOC) emissions from several types of consumer and commercial products in the Northern Virginia, Fredericksburg, and Richmond VOC Emissions Control Areas. By separate regulatory action published in 26:12 VA.R. 1876-1978 February 15, 2010, the new chapter became an effective regulation on March 17, 2010, but it is applicable only in the Northern Virginia and Fredericksburg VOC Emission Control Areas. As previously proposed, this regulatory action is revised to include only those provisions that represent changes to the new effective regulation.

Summary:

The amendments apply the provisions of four of the original articles in the Richmond VOC Emissions Control Area; specifically, provisions pertaining to portable fuel containers manufactured on or after August 1, 2010; consumer and commercial products manufactured on or after August 1, 2010; architectural and industrial maintenance coatings; and adhesives, adhesive primers, sealants, and sealant primers. Additionally, Article 48 of Chapter 40 (9VAC5-40) is amended to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area.

Compliance dates for standards applicable in the Richmond VOC Emissions Control Area have been changed to a more reasonable date in the future. The compliance dates for a proposed phase-in of standards applicable to the use of single-ply roof membrane adhesives and sealants has been modified to include a separate compliance date for the phase-in in the Richmond VOC Emissions Control Area. A temporary exemption for the manufacture and distribution of single-ply roof membrane adhesives and sealants, which did not appear in the original proposal but already appears in the effective regulatory language, has been preserved.

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.

Article 48
Emission Standards for Mobile Equipment Repair and Refinishing Operations (Rule 4-48)

9VAC5-40-6970. Applicability and designation of affected facility.

A. Except as provided in ~~subsection C of this section~~ 9VAC5-40-6975, the affected facility to which the provisions of this article apply is each mobile equipment repair and refinishing operation. Certain provisions also apply to each person providing or selling affected coatings.

B. The provisions of this article apply only to sources and persons in the Northern Virginia, ~~and~~ Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

~~C. The provisions of this article do not apply under any of the following circumstances:~~

~~1. The mobile equipment repair and refinishing operation is subject to Article 28 (9VAC5-40-3860 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Automobile and Light Duty Truck Coating Application Systems).~~

~~2. The mobile equipment repair and refinishing operation is subject to Article 34 (9VAC5-40-4760 et seq.) of 9VAC5 Chapter 40 (Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems).~~

~~3. The person applying the coatings does not receive compensation for the application of the coatings.~~

~~4. The mobile equipment repair and refinishing operations uses coatings required to meet military specifications (MILSPEC) where no other existing coating can be used that meets the provisions of this article.~~

9VAC5-40-6975. Exemptions.

The provisions of this article do not apply under any of the following circumstances:

1. The mobile equipment repair and refinishing operation is subject to Article 28 (9VAC5-40-3860 et seq.) of 9VAC5-40 (Emission Standards for Automobile and Light Duty Truck Coating Application Systems).

2. The mobile equipment repair and refinishing operation is subject to Article 34 (9VAC5-40-4760 et seq.) of 9VAC5-40 (Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems).

3. The person applying the coatings does not receive compensation for the application of the coatings.

4. The mobile equipment repair and refinishing operation uses coatings required to meet military specifications (MILSPEC) where no other existing coating can be used that meets the provisions of this article.

9VAC5-40-7050. Compliance ~~schedule~~ schedules.

Affected persons and facilities shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; ~~or~~

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area~~.~~; or

3. [~~May 1, 2010~~ March 1, 2014], in the Richmond VOC Emissions Control Area.

Part II
Emission Standards

Article 1
Emission Standards for Portable Fuel Containers and Spouts Manufactured before [~~May 1, 2010~~] August 1, 2010

9VAC5-45-60. Applicability.

A. Except as provided in 9VAC5-45-70, the provisions of this article apply to any portable fuel container or spout manufactured before [~~May 1, 2010~~] August 1, 2010. The provisions of Article 2 (9VAC5-45-160 et seq.) of this part apply to portable fuel containers and spouts manufactured on or after [~~May 1, 2010~~] August 1, 2010.

B. Except as provided in 9VAC5-45-70, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.

C. The provisions of this article apply only to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-70. Exemptions.

A. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60.

B. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9VAC5-45-90, as long as the manufacturer or distributor can demonstrate that: (i) the portable fuel container or spout is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C; and (ii) the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

C. The provisions of this article do not apply to safety cans meeting the requirements of ~~subpart F of~~ 29 CFR Part 1926 Subpart F.

D. The provisions of this article do not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

E. The provisions of this article do not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided (i) such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions, and (ii) such devices either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

F. The provisions of this article do not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

G. The provisions of this article do not apply to closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

H. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-90. Standard for volatile organic compounds.

A. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container after the compliance dates specified in 9VAC5-45-120 A unless that portable fuel container meets all of the following standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Has only one opening for both filling and pouring.

4. Does not exceed a permeation rate of 0.4 grams per gallon per day.

5. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any spout after the compliance dates specified in 9VAC5-45-120 unless that spout meets all of the following standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

C. The test procedures for determining compliance with the standards in this section are set forth in 9VAC5-45-130. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-45-130 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for

sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

E. The following provisions apply to sell through of portable fuel containers and spouts manufactured before [~~May 1, 2010~~] August 1, 2010:

1. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured before the applicable compliance date specified in 9VAC5-45-120 A~~,~~ may be sold, supplied, or offered for sale after the applicable compliance date, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

2. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured after the applicable compliance date specified in 9VAC5-45-120 A and before [~~May 1, 2010~~] August 1, 2010, may be sold, supplied, or offered for sale [~~after~~ May 1, 2010 on or after] August 1, 2010, if it complies with all of the provisions of Article 2 (9VAC5-45-160 et seq.) of this part.

3. Except as provided in subdivisions 1 and 2 of this subsection, displaying the date of manufacture, or a code indicating the date of manufacture, on the product container or package does not exempt the owner or product from the provisions of this article.

Article 2

Emission Standards for Portable Fuel Containers and Spouts Manufactured [~~On or After~~ May 1, 2010 on or after] August 1, 2010

9VAC5-45-160. Applicability.

A. Except as provided in 9VAC5-45-170, the provisions of this article apply to any portable fuel container or spout manufactured on or after [~~May 1, 2010~~] August 1, 2010. The provisions of Article 1 (9VAC5-45-60 et seq.) of this part apply to portable fuel containers and spouts manufactured before [~~May 1, 2010~~] August 1, 2010.

B. Except as provided in 9VAC5-45-170, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale, advertises for sale, or manufactures for sale portable fuel containers or spouts.

C. The provisions of this article apply only to owners and other persons in the Northern Virginia ~~and,~~ Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-170. Exemptions.

A. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C.

B. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9VAC5-45-190, as long as the manufacturer or distributor can demonstrate that: (i) the portable fuel container or spout is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C; and (ii) the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the applicable volatile organic compound emissions control areas designated in 9VAC5-45-160 C. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

C. The provisions of this article do not apply to safety cans meeting the requirements of ~~subpart F of~~ 29 CFR Part 1926 Subpart F.

D. The provisions of this article do not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

E. The provisions of this article do not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons provided (i) such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions, and (ii) such devices either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

F. The provisions of this article do not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

G. The provisions of this article do not apply to closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

H. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-190. Standard for volatile organic compounds.

A. The following provisions apply to portable fuel containers and spouts manufactured on or after [~~May 1, 2010~~] August 1, 2010:

1. No owner or other person shall sell, supply, offer for sale, or advertise for sale any portable fuel container or

spout manufactured on or after [~~May 1, 2010~~] August 1, 2010, unless that portable container or spout is certified by the board to be a spill-proof system or spill-proof spout that is in compliance with the standards in subsection B of this section in accordance with the certification procedures specified in 9VAC5-45-200.

2. No owner or other person shall manufacture for sale any portable fuel container or spout on or after [~~May 1, 2010~~] August 1, 2010, unless that portable container or spout is certified by the board to be a spill-proof system or spill-proof spout that is in compliance with the standards in subsection B of this section in accordance with the certification procedures specified in 9VAC5-45-200.

B. The following standards apply to each portable fuel container or spout manufactured on or after [~~May 1, 2010~~] August 1, 2010, that is subject to the provisions of this article:

1. Portable fuel containers shall be color coded and marked as follows:

a. Portable fuel containers shall be color coded for specific fuels:

(1) Gasoline – red;

(2) Diesel – yellow; and

(3) Kerosene – blue.

b. Each portable fuel container shall have identification markings on the container and on the spill-proof spout.

(1) Red containers shall be permanently identified with the embossed language or permanent durable label "GASOLINE" in minimum 34-point Arial font or a font of equivalent proportions.

(2) Yellow containers shall be permanently identified with the embossed language or permanent durable label "DIESEL" in minimum 34-point Arial font or a font of equivalent proportions.

(3) Blue containers shall be permanently identified with the embossed language or permanent durable label "KEROSENE" in minimum 34-point Arial font or a font of equivalent proportions.

2. Portable fuel containers shall comply with emissions standards as follows:

a. Portable fuel containers that are equipped with an intended spill-proof spout shall emit no more than 0.3 grams per gallon per day.

b. Compliance with emission standards in this subdivision shall be determined using the test procedure specified in 9VAC5-45-250 B 2.

c. Portable fuel containers that share similar designs, that are constructed of identical materials, and that are manufactured using identical processes, but vary only in size or color may be considered for certification as a product family.

3. Portable fuel containers and spouts shall comply with the specifications for durability in subsection 7.4 of the test procedure specified in 9VAC5-45-250 B 2.

4. There shall be no fluid leakage from any point in the spill-proof system or spill-proof spout as specified in the test procedures specified in 9VAC5-45-250 B 1 and 2.

5. The spill-proof system or spill-proof spout shall automatically close when the spill-proof spout is removed from the target tank, seal, and remain completely closed when not dispensing fuel, as specified in the test procedure specified in 9VAC5-45-250 B 1. Also, no liquid, beyond wetted surfaces, shall be retained in the spill-proof spout after fueling that may evaporate into the atmosphere.

6. An applicant seeking certification of a portable fuel container or spout from the board pursuant to this article shall also:

a. Warrant that its spill-proof system or spill-proof spout is free from defects in materials and workmanship that cause such systems or spill-proof spouts to fail to conform with each of the certification and compliance standards specified in CARB "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501," for a period of one year from the date of sale; and

b. Supply a copy of the warranty language specified in subdivision a of this subdivision that is supplied to the buyer in the packaging for each spill-proof system or spill-proof spout at the time of sale identifying the following minimum requirements:

(1) A statement of the terms and length of the warranty period;

(2) An unconditional statement that the spill-proof system or spill-proof spout is certified to the requirements in subdivision a of this subdivision (which may be referred to as being certified to California requirements); and

(3) A listing of the specific certification requirements or limitations to which it was certified.

7. An applicant shall supply a copy of the operating instructions intended for each spill-proof system or spill-proof spout, and fueling application, as supplied to the buyer in the packaging for each spill-proof system or spill-proof spout at the time of sale. These instructions shall include, at a minimum, the following specifications:

a. A listing of any specific equipment types, such as passenger cars and trucks, lawn and garden equipment, off-road motorcycles and snowmobiles, industrial equipment, and marine vessels that the spill-proof system or spill-proof spout, is not intended to refuel; and

b. Other instructions, such as the recommended fueling angle(s) or special instructions such as venting prior to use.

8. Spill-proof systems, spill-proof spouts and all components incorporated therein, such as gaskets, seals, or O-rings must demonstrate compliance with the requirements specified in 9VAC5-45-250 B 3 and 4. Applicants may request limited certification for use with only specified fuel blends. Such fuel-specific certifications shall clearly specify the limits and restrictions of the certification.

9. A portable fuel container may incorporate a secondary opening or vent hole (i.e., an opening other than the opening needed for the spout) provided the secondary opening or vent hole is not easily tampered by a consumer, and it does not emit hydrocarbon vapors in excess of the amounts specified in this section during fueling, storage, transportation, or handling events.

C. The test procedures for determining compliance with the standards in this section are set forth in 9VAC5-45-250. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-45-250 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

9VAC5-45-200. Certification procedures.

A. Provisions follow concerning the requirements and process for board certification of a portable fuel container or spout manufactured on or after [~~May 1, 2010~~] August 1, 2010, as a spill-proof system or spill-proof spout.

B. To be considered by the board for certification, an application for certification shall be submitted in writing to the board by the manufacturer of the portable fuel container or spout.

1. Except as provided in subdivision D 2 of this section, the application shall contain the following information:

a. An identification of the names, addresses, and phone numbers of the company, owner or other persons that are submitting the application, and the names and phone numbers of contact persons that are knowledgeable concerning the application.

b. Model numbers and sizes of spill-proof systems or spill-proof spouts for which certification is requested.

c. Test data that demonstrates that the spill-proof systems or spill-proof spouts comply with each of the certification requirements identified in 9VAC5-45-190 B.

d. Engineering drawings of the spill-proof system or spill-proof spout detailing dimensions specific to each component. If an application is submitted for a spill-proof system (i.e., container and spout), separate dimensioned drawings for the portable fuel container and for the spill-proof spout are required. If more than one type or size of portable fuel container or more than one type of spill-proof spout is included in the application, separate dimensioned drawings are required for each component.

e. Test data from each of the test procedures specified in 9VAC5-45-250 B 1 and 2 demonstrating that the spill-proof system, spill-proof spout, or component meets the applicable criteria.

f. Any other test data that supports the requirements in subdivision e of this subsection and that would assist in the determination of certification.

g. The language, symbols, or patterns that will actually be permanently embossed on the spill-proof system or spill-proof spout. This shall include examples of date code wheels as well as all other permanent markings and their locations on the container and/or spill-proof spout. Once the board certifies a spill-proof system or spill-proof spout, these permanent markings cannot be altered or modified in any way without first obtaining the board's approval.

h. The language or labels that may be affixed to the spill-proof system or spill-proof spout at the time of sale.

i. The manufacturer's recommended instructions, instruction decals, or any other type of placard attached to the spill-proof system or spill-proof spout at the time of sale. Include examples of actual decals or placards if available. Proposed placards or decals are sufficient if actual samples are not available. Once the board certifies a spill-proof system or spill-proof spout, these decals or placards cannot be altered or modified in any way without first obtaining the board's approval.

j. The manufacturer warranty(s) as defined in 9VAC5-45-190 B 6.

k. A description of the materials used in the construction of the spill-proof system or spill-proof spout. Material compositions of gaskets, O-rings, and seals must be described.

l. If the applicant is not the manufacturer of all system components incorporated in a spill-proof system or spill-proof spout, the applicant must include evidence that the component manufacturers have been notified of the applicant's intended use of the manufacturers' components in the spill-proof system or spill-proof spout for which the application is being made.

(1) If the applicant is requesting inclusion of one or more components not manufactured by it on the applicable spill-proof system or spill-proof spout, the applicant shall

notify the component manufacturers and obtain the information required of the application as specified in this subsection.

(2) If the component design and material specifications requested for inclusion in the certification have not been previously incorporated in a spill-proof system or spill-proof spout that has been issued a CARB certification executive order or has been certified by the board pursuant to these procedures, then each of the components shall be subject to each of the application and test requirements specified in this article.

m. A sample of the spill-proof system or spill-proof spout is not required as part of the initial application for certification. The board may later require that a sample be provided if it is deemed necessary to make the proper certification determination.

n. The document certification statement required by 9VAC5-20-230, signed by a responsible official as defined in that section.

o. The information required by subdivision B 1 a of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this article shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

2. In accordance with the time periods specified in subsection C of this section, the board will certify a portable fuel container or spout. The board will specify such terms and conditions as are necessary to ensure that the emissions from the portable fuel containers or spouts do not exceed the VOC standards specified in 9VAC5-45-190. The certification shall also include operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

C. Provisions follow concerning the portable fuel container or spout certification time frames.

1. The board will take appropriate action on an application within the following time periods:

a. Within 30 working days of receipt of an application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall certify that the requirements have been met in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. [~~The board may extend the time period in subdivision 1 c of this subsection if additional information is needed.~~] Before the end of each time period specified in this section, the board and the applicant may mutually agree to a longer time period for the board to take the appropriate action.

D. In accordance with the following procedures, the board will take into consideration whether the portable fuel container or spout has been certified by CARB.

1. In lieu of granting certification based upon review of an application as required under subsection B of this section, certification may be granted by the board as follows:

a. Certification may be granted solely on the basis of the effective CARB certification executive order, or

b. Certification may be granted on the basis of the effective CARB certification executive order, modified as necessary by the board to meet the requirements of this article.

2. An abbreviated application may be submitted by a manufacturer requesting certification by the board under subdivision 1 of this subsection. The abbreviated application shall include, as a minimum:

a. A request by the manufacturer that certification be granted by the board based upon an effective CARB certification executive order.

b. A copy of the effective CARB certification executive order, including all conditions established by CARB applicable to the CARB certification executive order.

c. A certification that the manufacturer will (i) comply with the applicable CARB certification executive order within the volatile organic compound emissions control areas specified in 9VAC5-45-160 C and (ii) comply with any additional terms and conditions that the board may specify in granting certification under this subsection.

d. Manufacturer and product information as specified in subdivisions B 1 a and b of this section.

e. The document certification statement required by 9VAC5-20-230 certifying the information in the application and signed by a responsible official.

[~~4.~~] 3. The board's certification shall contain such terms and conditions as necessary to adapt terms and conditions in the CARB certification executive order to satisfy the provisions of this article.

[~~5.~~] 4. Any board certification granted under this subsection is contingent upon the effective CARB certification executive order provided with the application. Board certification granted on the basis of this subsection automatically expires on the date that the CARB certification executive order upon which it was based is no longer effective.

9VAC5-45-240. Compliance schedules.

A. Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than ~~August 1, 2010~~ [~~May 1, 2010.~~:

1. August 1, 2010, in the Northern Virginia and Fredericksburg VOC Emissions Control Areas; or

2. March 1, 2014, in the Richmond VOC Emissions Control Area.]

B. Any owner or other person who cannot comply with the provisions of this article by the date specified in subsection A of this section, due to extraordinary reasons beyond that person's reasonable control, may apply in writing to the board for a waiver. The waiver application shall set forth:

1. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

2. The proposed date by which compliance with the provisions of this article will be achieved; and

3. A compliance report detailing the methods by which compliance will be achieved.

C. No waiver may be granted unless all of the following findings are made:

1. That, due to reasons beyond the reasonable control of the applicant, required compliance with this article would result in extraordinary economic hardship;

2. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the waiver; and

3. That the compliance report proposed by the applicant can reasonably be implemented and shall achieve compliance as expeditiously as possible.

D. Any approval of a waiver shall specify a final compliance date by which compliance with the requirements of this article shall be achieved. Any approval of a waiver shall contain a condition that specifies the increments of progress necessary to assure timely compliance and such other conditions that the board finds necessary to carry out the purposes of this article.

E. A waiver shall cease to be effective upon the failure of the party to whom the waiver was granted to comply with any term or condition of the waiver.

F. Upon the application of any person, the board may review, and for good cause, modify or revoke a waiver from requirements of this article.

Article 3

Emission Standards for Consumer Products Manufactured before [~~May 1, 2010~~] August 1, 2010

9VAC5-45-280. Applicability.

A. Except as provided in 9VAC5-45-290, the provisions of this article apply to any consumer product manufactured before [~~May 1, 2010~~] August 1, 2010, that contains volatile organic compounds (VOCs). The provisions of Article 4 (9VAC5-45-400 et seq.) of this part apply to consumer products manufactured on or after [~~May 1, 2010~~] August 1, 2010.

B. Except as provided in 9VAC5-45-290, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale or manufactures for sale any consumer product.

C. The provisions of this article apply to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

D. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-310. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-290, 9VAC5-45-320, and 9VAC5-45-330, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after the applicable compliance date specified in 9VAC5-45-360 or (ii) manufacture for sale a consumer product on or after the applicable compliance date specified in 9VAC5-45-360, that contains volatile organic compounds in excess of the limits specified in Table 45-3A.

TABLE 45-3A

Product Category	Percent VOC by Weight
Adhesives	
Aerosol adhesives	
Mist spray adhesive:	65%
Web spray adhesive:	55%
Special purpose spray adhesives	

Automotive engine compartment adhesive:	70%
Automotive headliner adhesive:	65%
Flexible vinyl adhesive:	70%
Laminate repair or edgebanding adhesive:	60%
Mounting adhesive:	70%
Polystyrene foam adhesive:	65%
Polyolefin adhesive:	60%
Contact adhesive:	80%
Construction, panel, and floor covering adhesive:	15%
General purpose adhesive:	10%
Structural waterproof adhesive:	15%
Air fresheners	
Single-phase aerosol:	30%
Double-phase aerosol:	25%
Liquid/Pump spray:	18%
Solid/Gel:	3%
Antiperspirants	
Aerosol:	40% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Automotive brake cleaner:	45%
Automotive rubbing or polishing compound:	17%
Automotive wax, polish, sealant, or glaze	
Hard paste wax:	45%
Instant detailer:	3%
All other forms:	15%
Automotive windshield washer fluid:	35%
Bathroom and tile cleaners	
Aerosol:	7%
All other forms:	5%
Bug and tar remover:	40%
Carburetor or fuel-injection air intake cleaner:	45%
Carpet and upholstery cleaners	
Aerosol:	7%
Nonaerosol (dilutable):	0.1%
Nonaerosol (ready-to-use):	3.0%
Charcoal lighter material:	See subsection F of this section.
Cooking spray, aerosol:	18%
Deodorants	
Aerosol:	0% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Dusting aids	
Aerosol:	25%
All other forms:	7%
Engine degreasers	
Aerosol:	35%
Nonaerosol:	5%
Fabric protectant:	60%
Floor polishes/Waxes	
Products for flexible flooring materials:	7%
Products for nonresilient flooring:	10%
Wood floor wax:	90%
Floor wax stripper, nonaerosol:	See subsection H of this section.
Furniture maintenance products	
Aerosol:	17%
All other forms except solid or paste:	7%
General purpose cleaners	

Aerosol:	10%
Nonaerosol:	4%
General purpose degreasers	
Aerosol:	50%
Nonaerosol:	4%
Glass cleaners	
Aerosol:	12%
Nonaerosol:	4%
Hair mousse:	6%
Hair shine:	55%
Hair spray:	55%
Hair styling gel:	6%
Heavy-duty hand cleaner or soap:	8%
Insecticides	
Crawling bug (aerosol):	15%
Crawling bug (all other forms):	20%
Flea and tick:	25%
Flying bug (aerosol):	25%
Flying bug (all other forms):	35%
Fogger:	45%
Lawn and garden (all other forms):	20%
Lawn and garden (nonaerosol):	3%
Wasp and hornet:	40%
Laundry prewash	
Aerosol/Solid:	22%
All other forms:	5%
Laundry starch product:	5%
Metal polish or cleanser:	30%
Multipurpose lubricant (excluding solid or semi-solid products):	50%
Nail polish remover:	75%
Nonselective terrestrial herbicide, nonaerosol:	3%
Oven cleaners	
Aerosol/Pump spray:	8%
Liquid:	5%
Paint remover or stripper:	50%
Penetrant:	50%
Rubber and vinyl protectants	
Nonaerosol:	3%
Aerosol:	10%
Sealant and caulking compound:	4%
Shaving cream:	5%
Silicone-based multipurpose lubricant (excluding solid or semi-solid products):	60%
Spot removers	
Aerosol:	25%
Nonaerosol:	8%
Tire sealant and inflator:	20%
Undercoating, aerosol:	40%

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9VAC5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 45-3A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 45-3A shall apply to the product only after the maximum recommended dilution has taken place.

D. The following provisions apply to sell through of consumer products manufactured before [~~May 1, 2010~~] August 1, 2010:

1. Notwithstanding the provisions of [~~subsections~~ subsection] A [~~and,~~] G, H or I of this section, a consumer product manufactured before the applicable compliance date specified in 9VAC5-45-360, may be sold, supplied, or offered for sale after the applicable compliance date if the date of manufacture or a date code representing the date of

manufacture is clearly displayed on the product container or package.

2. Notwithstanding the provisions of [~~subsections~~ subsection] A [~~and,~~] G, H, or I of this section, a consumer product manufactured after the applicable compliance date specified in 9VAC5-45-360 and before [~~May 1, 2010~~] August 1, 2010, may be sold, supplied, or offered for sale [~~after May 1, 2010~~] on or after August 1, 2010, if it complies with all of the provisions of Article 4 (9VAC5-45-400 et seq.) of this part.

3. Except as provided in subdivisions 1 and 2 of this subsection, displaying the date of manufacture, or a code indicating the date of manufacture, on the product container or package does not exempt the owner or product from the provisions of this article.

E. For those consumer products that are registered under FIFRA, the effective date of the VOC standards shall be one year after the applicable compliance date specified in 9VAC5-45-360.

F. The following requirements shall apply to all charcoal lighter material products:

1. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after the applicable compliance date or (ii) manufacture for sale a charcoal lighter material product unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that it has been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9VAC5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the executive order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21). The provisions relating to LVP-VOC in 9VAC5-45-290 F and 9VAC5-45-300 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-45-310 A and this subsection.

b. The board may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material that meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is

complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection that may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal that are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

G. Provisions follow concerning aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9VAC5-45-290 and 9VAC5-45-330, no owner or other person shall sell, supply, offer for sale, use, or manufacture for sale an aerosol adhesive that, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions for special purpose spray adhesive specified in 9VAC5-45-300 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-45-300 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9VAC5-45-300 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9VAC5-45-310 A.

3. Effective as of the applicable compliance dates specified in 9VAC5-45-360, no person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after the applicable compliance date or (ii) manufacture for sale an aerosol adhesive that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9VAC5-45-340 D.

H. Effective as of the applicable compliance date specified in 9VAC5-45-360, no owner or other person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required as long as comparable terminology is used.

I. For a consumer product for which standards are specified under subsection A of this section, no owner or other person shall sell, supply, offer for sale, or manufacture for sale a consumer product that contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

J. The requirements of subsection I of this section shall not apply to an existing product formulation that complies with Table 45-3A or an existing product formulation that is

reformulated to meet Table 45-3A, provided the ozone-depleting compound content of the reformulated product does not increase.

K. The requirements of subsection I of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9VAC5-45-320. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency .

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the

responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-300 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-310 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. [~~The board may extend the time period in subdivision 1 c of this subsection if additional information is needed.~~] Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows.

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-300 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were

reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-310 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective.

(2) The date the surplus reductions being traded are due to expire.

(3) The amount (in pounds of VOCs) of surplus reductions that is being transferred.

(4) The total purchase price paid by the buyer for the surplus reductions.

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-310 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales \times \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC $content_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC $content_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-310 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-310 A is modified by the board in a future rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-310 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-3A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-3A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-390. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The company name of the responsible party and the party's address, telephone number, and designated contact person.

2. A showing satisfactory to the board under 9VAC5-170-60 B and C that supports any claim of confidentiality made

pursuant to 9VAC5-170-60, §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law, and other applicable state confidentiality requirements.

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label.

4. The product category to which the consumer product belongs.

5. The applicable product forms listed separately.

6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both.

7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form.

8. For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection.

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

a. Total exempt compounds.

b. Total LVP-VOCs that are not fragrances.

c. Total all other carbon-containing compounds that are not fragrances.

d. Total all noncarbon-containing compounds.

e. Total fragrance.

f. For products containing greater than 2.0% by weight fragrance:

(1) The percent of fragrances that are LVP-VOCs; and

(2) The percent of fragrances that are all other carbon-containing compounds [~~; and~~].

g. Total paradichlorobenzene.

10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

a. Each exempt compound; and

b. Each LVP-VOC that is not a fragrance.

11. If applicable, the weight percent composed of propellant for each product.

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percentage by weight of each ozone-depleting compound that is:

1. Listed in 9VAC5-45-310 I; and

2. Contained in a product subject to registration under subsection B of this section in an amount greater than 1.0% by weight.

D. Information submitted by responsible parties pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

E. Provisions follow concerning special recordkeeping and reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9VAC5-45-310 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall keep records of the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-45-360, and ending with the year 2010:

a. The product brand name and a copy of the product label with legible usage instructions;

b. The product category to which the consumer product belongs;

c. The applicable product form, listed separately;

d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;

e. The weight percentage, to the nearest 0.10% of perchloroethylene and methylene chloride in the consumer product;

3. Upon 90 days written notice, the board may require a responsible party to report the information specified in subdivision 2 of this subsection.

4. Records required by subdivision 2 of this subsection shall be maintained by the responsible party for three calendar years from the date such records were created.

5. Alternative control plan notifications, records, and reporting shall be made as required by 9VAC5-45-320 and as required in the ACP agreement.

6. Innovative product notifications, records, and reporting shall be made as required by 9VAC5-45-330 and as

required in the innovative products exemption notification letter.

Article 4

Emission Standards for Consumer Products Manufactured on or after [~~May 1, 2010~~] August 1, 2010

9VAC5-45-400. Applicability.

A. Except as provided in 9VAC5-45-410, the provisions of this article apply to any consumer product manufactured on or after [~~May 1, 2010~~] August 1, 2010, that contains volatile organic compounds (VOCs). The provisions of Article 3 (9VAC5-45-280 et seq.) of this part apply to consumer products manufactured before [~~May 1, 2010~~] August 1, 2010.

B. Except as provided in 9VAC5-45-410, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale or manufactures for sale any consumer product.

C. The provisions of this article apply to owners and other persons in the Northern Virginia ~~and~~, Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

D. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell or otherwise provide products to businesses/governmental entities/individuals.

9VAC5-45-420. 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 herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"ACP" or "alternative control plan" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

"ACP emissions" means the sum of the VOC emissions from every ACP product subject to an ACP agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \ldots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content)\ x\ (Enforceable\ Sales)}{100}$$

where:

1, 2,...N = each product in an ACP up to the maximum N.

Enforceable sales = (see definition in this section).

VOC content = one of the following:

1. For all products except for charcoal lighter material products:

$$VOC\ Content = \frac{((B - C)\ x\ 100)}{A}$$

where:

A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9VAC5-45-410.

2. For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ \ Emissions\ \ x\ 100)}{Certified\ \ Use\ Rate}$$

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"ACP limit" means the maximum allowable ACP emissions during the compliance period specified in an ACP agreement approving an ACP, expressed to the nearest pound of VOC, and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \ldots + (Limit)_N$$

where:

$$Limit = \frac{(ACP\ Standard)\ x\ (Enforceable\ Sales)}{100}$$

where:

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

1, 2,...N = each product in an ACP up to the maximum N.

"ACP product" means any consumer product subject to the VOC standards specified in 9VAC5-45-430 A, except those products that have been exempted as innovative products under 9VAC5-45-450.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

1. The applicable VOC standard specified in 9VAC5-45-430 A for all ACP products except for charcoal lighter material;

2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ pound\ VOC\ per\ start\ x\ 100)}{Certified\ Use\ Rate}$$

where:

0.020 = the certification emissions level for the product, as specified in9VAC5-45-430 E.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive only, adhesive also does not include units of product, less packaging, that consist of more than one gallon. In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces. The package size limitations do not apply to aerosol adhesives.

"Adhesive remover" means a product designed to remove adhesive from either a specific substrate or a variety of substrates. Adhesive remover does not include products that remove adhesives intended exclusively for use on humans or animals. For the purpose of this definition and the following adhesive remover subcategories in subdivisions 1 through 4 of this definition, adhesive shall mean a substance used to bond one or more materials. Adhesives include, but are not limited to, caulk, sealant, glue, or similar substances used for the purpose of forming a bond.

1. "Floor and wall covering adhesive remover" means a product designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate.

2. "Gasket or thread locking adhesive remover" means a product designed or labeled to remove gaskets or thread locking adhesives. Products labeled for dual use as a paint stripper and as a gasket remover or thread locking adhesive remover are considered gasket or thread locking adhesive remover.

3. "General purpose adhesive remover" means a product designed or labeled to remove cyanoacrylate adhesives and nonreactive adhesives or residue from a variety of substrates. General purpose adhesive remover includes, but is not limited to, products that remove thermoplastic adhesives, pressure sensitive adhesives, dextrin-based or starch-based adhesives, casein glues, rubber-based or latex-based adhesives, as well as products that remove stickers, decals, stencils, or similar materials. General purpose adhesive remover does not include floor or wall covering adhesive remover.

4. "Specialty adhesive remover" means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur. Examples of reactive adhesives include, but are not limited to, epoxies, urethanes, and silicones. Specialty adhesive remover does not include gasket or thread locking adhesive remover.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. Aerosol adhesives include special purpose spray adhesives, mist spray adhesives, and web spray adhesives.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's carrier, or by means of a mechanically induced force. Aerosol product does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home use, use in structural pest control, industrial use, or institutional use. For the purposes of this definition only:

1. "Home use" means use in a household or its immediate environment.

2. "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

3. "Institutional use" means use within the perimeter of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

4. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

"Air freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air. Air fresheners do not include

products that are used on the human body, products that function primarily as cleaning products (as indicated on a product label) or as toilet/urinal care products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All other carbon-containing compounds" means all other compounds that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

"All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent or toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, and rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

"Anti-static product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity. Anti-static products do not include electronic cleaners, floor polish or waxes, floor coatings, and products that meet the definition of aerosol coating products or architectural coatings.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent or medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material, or dirt from motor vehicle brake mechanisms.

"Automotive hard paste wax" means an automotive wax or polish that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;

2. A solid at room temperature; and

3. Contains no water.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid also includes liquids that are (i) packaged as a pre-wetted, single-use manual wipe and (ii) designed exclusively for cleaning, washing, or wetting automotive glass surfaces for the purpose of restoring or maintaining visibility for the driver. Glass cleaners that are intended for use on other glass surfaces are not included in this definition.

Automotive windshield washer fluid does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaners do not include products designed primarily to clean toilet bowls, toilet tanks, or urinals.

"Bug and tar remover" means a product labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: (i) biological residues, such as insect carcasses and tree sap, and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaner" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaner does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9VAC5-45-430 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound VOC per start.

"Certified use rate" means the usage level for products approved under 9VAC5-45-430 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21), expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes;

2. Metallic cylinders using paper tinder;

3. Natural gas;

4. Propane; or

5. Fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

"Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

1. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

2. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means a person who purchases or acquires a consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings. As used in this article, consumer products shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial, or commercial uses.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is allowed to dry before the two surfaces are placed in contact with each other;

3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Contact adhesive - general purpose" means any contact adhesive that is not a contact adhesive - special purpose.

"Contact adhesive - special purpose" means a contact adhesive that is used as follows:

1. To bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon®, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to any porous or nonporous surface, and is sold in units of product, less packaging, that contain more than eight fluid ounces; or

2. In automotive applications that are either:

a. Automotive under-the-hood applications requiring heat, oil, or gasoline resistance; or

b. Body-side molding, automotive weatherstrip, or decorative trim.

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

"Contact person" means a representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and that belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent or minimize odor. A deodorant body spray product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla, is a deodorant.

"Deodorant body spray" means a personal fragrance product with 20% or less fragrance that is designed for application all over the human body to provide a scent. A deodorant body spray product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla, is a deodorant.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacterium, virus, or another microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals;

2. Products designed for agricultural use;

3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or

4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a nonaqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or

2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does

not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9VAC5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. Dusting aid does not include pressurized gas dusters.

"Electrical cleaner" means a product labeled to remove heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators. Electrical cleaner does not include general purpose cleaners, general purpose degreasers, dusting aids, electronic cleaners, energized electrical cleaners, pressurized gas dusters, engine degreasers, anti-static products, or products designed to clean the casings or housings of electrical equipment.

"Electronic cleaner" means a product labeled for the removal of dirt, moisture, dust, flux or oxides from the internal components of electronic or precision equipment such as circuit boards, and the internal components of electronic devices, including but not limited to, radios, compact disc (CD) players, digital video disc (DVD) players, and computers. Electronic cleaner does not include general purpose cleaners, general purpose degreasers, dusting aids, pressurized gas dusters, engine degreasers, electrical cleaners, energized electrical cleaners, anti-static products, or products designed to clean the casings or housings of electronic equipment.

"Energized electrical cleaner" means a product that meets both of the following criteria:

1. The product is labeled to clean or degrease electrical equipment, where cleaning or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor;

2. The product label clearly displays the statements: "Energized equipment use only. Not to be used for motorized vehicle maintenance, or their parts."

Energized electrical cleaner does not include electronic cleaner.

"Enforceable sales" means the total amount of an ACP product sold for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and

3. Other accurate product sales records acceptable to the board.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Existing product" means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale prior to March 9, 2005, or any subsequently introduced identical formulation.

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics that are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Fabric refresher" means a product labeled to neutralize or eliminate odors on nonlaundered fabric including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing or on household furniture or objects upholstered or covered with fabrics such as, but not limited to, wool, cotton, or nylon. Fabric refresher does not include anti-static products, carpet and upholstery cleaners, soft household surface sanitizers, footwear or leather care products, spot removers, or disinfectants, or products labeled for application to both fabric and human skin. For the purposes of this definition only, soft household surface sanitizer means a product labeled to neutralize or eliminate odors on surfaces listed above whose label is registered as a sanitizer under FIFRA.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. Facial

cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high [~~naturally occurring~~ naturally occurring] levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

"Floor coating" means an opaque coating that is labeled and designed for application to flooring, including but not limited to, decks, porches, steps, and other horizontal surfaces that may be subject to foot traffic.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Footwear or leather care product" means any product designed or labeled to be applied to footwear or to other leather articles or components, to maintain, enhance, clean, protect, or modify the appearance, durability, fit, or flexibility of the footwear, leather article or component. Footwear includes both leather and nonleather foot apparel. Footwear or leather care product does not include fabric protectants; general purpose adhesives; contact adhesives; vinyl/fabric/leather/polycarbonate coatings; rubber and vinyl protectants; fabric refreshers; products solely for deodorizing; or sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm of Hg at 20ºC, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, wood cleaners and products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives;

2. Construction, panel, and floor covering adhesives;

3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product labeled to remove or dissolve grease, grime, oil, and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments that manufacture or construct goods or commodities; and (ii) labeled "not for retail sale." Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyorized degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Graffiti remover" means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish, from a variety of noncloth or nonfabric substrates. Graffiti remover does not include paint remover or stripper, nail polish remover, or spot remover. Products labeled for dual use as both a paint stripper and graffiti remover are considered graffiti removers.

"Gross sales" means the estimated total sales of an ACP product in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the current population of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400 C; or

2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling product, hair styling gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a consumer product that is applied to styled hair, and is designed or labeled to provide sufficient rigidity to hold, retain and/or finish the style of the hair for a period of time. Hair spray includes aerosol hair sprays, pump hair sprays, spray waxes; color, glitter, or sparkle hairsprays that make finishing claims; and products that are both a styling and finishing product. Hair spray does not include spray products that are intended to aid in styling but does not provide finishing of a hairstyle. For the purposes of this article, "finish" or "finishing" means the maintaining or holding of previously styled hair for a period of time. For the purposes of this article, "styling" means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Hair styling product" means a consumer product that is designed or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling and or sculpting of the hair. Hair styling product includes, but is not limited to hair balm; clay; cream; creme; curl straightener; gel; liquid; lotion; paste; pomade; putty; root lifter; serum; spray gel; stick; temporary hair straightener; wax; spray products that aid in styling but do not provide finishing of a hairstyle; and leave-in volumizers, detanglers or conditioners that make styling claims. Hair styling product does not include hair mousse, hair shine, hair spray, or shampoos or conditioners that are rinsed from the hair prior to styling. For the purposes of this article, "finish" or "finishing" means the maintaining or holding of previously styled hair for a period of time. For the purposes of this article, "styling" means the forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are (i) for

agricultural use, or (ii) restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20ºC.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;

2. For a use that requires a structural pest control license under applicable state laws or regulations; or

3. Materials classified for restricted use pursuant to 40 CFR 152.75 and require a pesticide business license from the Virginia Pesticide Control Board pursuant to 2VAC20-40-20 for use and possession.

"Insecticide fogger" means an insecticide product designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" or "industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or

2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of 9VAC5-45-460 C, aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two-cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are:

1. Sold exclusively to establishments that manufacture or construct goods or commodities; and

2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

1. Has a vapor pressure less than 0.1 mm Hg at 20ºC, as determined by CARB Method 310 (see 9VAC5-20-21);

2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown;

3. Is a chemical compound with a boiling point greater than 216ºC, as determined by CARB Method 310 (see 9VAC5-20-21); or

4. Is the weight percent of a chemical mixture that boils above 216ºC, as determined by CARB Method 310 (see 9VAC5-20-21).

For the purposes of the definition of LVP-VOC, "chemical compound" means a molecule of definite chemical formula and isomeric structure, and "chemical mixture" means a substrate composed of two or more chemical compounds.

"Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent or medicated toner" means a product regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20ºC.

"Metal polish or cleanser" means a product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel, and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the board, as specified in the ACP agreement.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multipurpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and

2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multipurpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multipurpose lubricant does not include multipurpose dry lubricants, penetrants, or silicone-based multipurpose lubricants.

"Multipurpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing, or dissolving other organic materials. Multipurpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multipurpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the applicable volatile organic compound emissions control areas designated in 9VAC5-45-400:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9VAC5-45-430; or

2. Only one distinct ACP product line subject to the requirements of 9VAC5-45-430, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multipurpose solvents, paint brush cleaners, products designed and labeled exclusively as graffiti removers, and

hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. Penetrant does not include multipurpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Personal fragrance product" means any product that is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. Personal fragrance product does not include: (i) deodorant; (ii) medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body; (iii) mouthwashes, breath fresheners and deodorizers; (iv) lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations; (v) products designed exclusively for use on human genitalia; (vi) soaps, shampoos, and products primarily used to clean the human body; and (vii) fragrance products designed to be used exclusively on nonhuman animals.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"Pressurized gas duster" means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of surfaces that cannot be cleaned with solvents. Pressurized gas duster does not include dusting aids.

"Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product category" means the applicable category that best describes the product as listed in this section and in Table 45-4A in 9VAC5-45-430 A.

"Product form," for the purpose of complying with 9VAC5-45-510 (notification, records and reporting) only, means the applicable form that most accurately describes the product's dispensing form as follows:

A = Aerosol Product.

S = Solid.

P = Pump Spray.

L = Liquid.

SS = Semisolid.

O = Other.

"Product line" means a group of products of identical form and function belonging to the same product category.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Reconcile" or "reconciliation" means to provide sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9VAC5-45-440 B 1 g (10).

"Responsible ACP party" means the company, firm, or establishment that is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Responsible party" means the company, firm, or establishment that is listed on the product's label. If the label lists two companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

"Retail outlet" means an establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve, or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only, "removable caulking compound" means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking compound" means a compound that contains no appreciable level of opaque fillers or pigments, transmits most or all visible light through the caulk when cured, is paintable, and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including, but not limited to gels, pastes, and greases.

"Shaving cream" means an aerosol product that dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair. Shaving cream does not include shaving gel.

"Shaving gel" means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair. Shaving gel does not include shaving cream.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multipurpose lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multipurpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and that does not require that the product container be shaken before use.

"Small business" means any stationary source that is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances that, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9VAC5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

2. "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least 5.0%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21) or from product formulation data.

3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

a. The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or

b. The touch-up, repair, or attachment of edgebonding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265°F and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275°F.

"Spot remover" means a product labeled to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, or multipurpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or a deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with the definition in the federal consumer products regulation, 40 CFR 59 Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9VAC5-45-440 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflator" means a pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Toilet/urinal care product" means any product designed or labeled to clean or to deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals includes, but is not limited to, toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations, and toilet or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. Toilet/urinal care product does not include bathroom and tile cleaner or general purpose cleaner.

"Total maximum historical emissions" or "TMHE" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \ldots + (MHE)_N$$

$$MHE = \left(\frac{Highest\ VOC\ Content \times Highest\ Sales}{100 \times 365}\right) \times Missing\ Data\ Days$$

where:

Highest VOC content = the maximum VOC content that the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing data days = (see definition in this section).

1, 2,..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement.

"Type A propellant" means a compressed gas such as CO_2, N_2, N_2O, or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means a halocarbon that is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.

"Vinyl/fabric/leather/polycarbonate coating" means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or polycarbonate substrates.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9VAC5-45-490 B and C.

For charcoal lighter material products only,

$$VOC\ Content = \frac{(Certified\ Emissions\ x\ 100)}{Certified\ Use\ Rate}$$

where:

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10-20.

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. Waterproofer does not include fabric protectants.

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means an aerosol adhesive that is not a mist spray or special purpose spray adhesive.

"Wood cleaner" means a product labeled to clean wooden materials including but not limited to decking, fences, flooring, logs, cabinetry, and furniture. Wood cleaner does not include dusting aids, general purpose cleaners, furniture maintenance products, floor wax strippers, floor polish or waxes, or products designed and labeled exclusively to preserve or color wood.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9VAC5-45-430. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-410, 9VAC5-45-440, and 9VAC5-45-450, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after [~~May 1, 2010~~] August 1, 2010, or (ii) manufacture for sale a consumer product on or after [~~May 1, 2010~~] August 1, 2010, that contains volatile organic compounds in excess of the limits specified in Table 45-4A.

TABLE 45-4A

Product Category [:]	Percent VOC by Weight
Adhesive Removers	
Floor or wall covering adhesive remover	5%
Gasket or thread locking adhesive remover	50%
General purpose adhesive remover	20%
Specialty adhesive remover	70%
Adhesives	
Aerosol adhesives	
Mist spray adhesive:	65%
Web spray adhesive:	55%
Special purpose spray adhesives	
Automotive engine compartment adhesive:	70%
Automotive headliner adhesive:	65%
Flexible vinyl adhesive:	70%
Laminate repair or edgebanding adhesive:	60%
Mounting adhesive:	70%
Polystyrene foam adhesive:	65%
Polyolefin adhesive:	60%
Contact adhesives	

General purpose contact adhesive:	55%
Special purpose contact adhesive:	80%
Construction, panel, and floor covering adhesive:	15%
General purpose adhesive:	10%
Structural waterproof adhesive:	15%
Air fresheners	
Single-phase aerosol:	30%
Double-phase aerosol:	25%
Liquid/Pump spray:	18%
Solid/Semisolid:	3%
Antiperspirants	
Aerosol:	40% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Anti-static product, nonaerosol:	11%
Automotive brake cleaner:	45%
Automotive rubbing or polishing compound:	17%
Automotive wax, polish, sealant, or glaze	
Hard paste wax:	45%
Instant detailer:	3%
All other forms:	15%
Automotive windshield washer fluid:	35%
Bathroom and tile cleaners	
Aerosol:	7%
All other forms:	5%
Bug and tar remover:	40%
Carburetor or fuel-injection air intake cleaner:	45%
Carpet and upholstery cleaners	
Aerosol:	7%
Nonaerosol (dilutable):	0.1%
Nonaerosol (ready-to-use):	3.0%
Charcoal lighter material:	See subsection E of this section.
Cooking spray, aerosol:	18%
Deodorants	
Aerosol:	0% HVOC, 10% MVOC
Nonaerosol:	0% HVOC, 0% MVOC
Dusting aids	
Aerosol:	25%
All other forms:	7%
Electrical cleaner	45%
Electronic cleaner	75%
Engine degreasers	
Aerosol:	35%
Nonaerosol:	5%
Fabric protectant:	60%
Fabric refreshers	
Aerosol:	15%
Nonaerosol:	6%
Floor polishes/Waxes	
Products for flexible flooring materials:	7%
Products for nonresilient flooring:	10%
Wood floor wax:	90%
Floor wax stripper, nonaerosol:	See subsection G of this section.
Footwear or leather care products	
Aerosol:	75%
Solid:	55%
All other forms:	15%
Furniture maintenance products	
Aerosol:	17%
All other forms except solid or	7%

paste:	
General purpose cleaners	
Aerosol:	10%
Nonaerosol:	4%
General purpose degreasers	
Aerosol:	50%
Nonaerosol:	4%
Glass cleaners	
Aerosol:	12%
Nonaerosol:	4%
Graffiti removers	
Aerosol:	50%
Nonaerosol:	30%
Hair mousse:	6%
Hair shine:	55%
Hair spray:	55%
Hair styling products	
Aerosol and pump spray:	6%
All other forms:	2%
Heavy-duty hand cleaner or soap:	8%
Insecticides	
Crawling bug (aerosol):	15%
Crawling bug (all other forms):	20%
Flea and tick:	25%
Flying bug (aerosol):	25%
Flying bug (all other forms):	35%
Fogger:	45%
Lawn and garden (all other forms):	20%
Lawn and garden (nonaerosol):	3%
Wasp and hornet:	40%
Laundry prewash	
Aerosol/Solid:	22%
All other forms:	5%
Laundry starch product:	5%
Metal polish or cleanser:	30%
Multipurpose lubricant (excluding solid or semi-solid products):	50%
Nail polish remover:	75%
Nonselective terrestrial herbicide, nonaerosol:	3%
Oven cleaners	
Aerosol/Pump spray:	8%
Liquid:	5%
Paint remover or stripper:	50%
Penetrant:	50%
Rubber and vinyl protectants	
Nonaerosol:	3%
Aerosol:	10%
Sealant and caulking compound:	4%
Shaving cream:	5%
Shaving gel:	7%
Silicone-based multipurpose lubricant (excluding solid or semi-solid products):	60%
Spot removers	
Aerosol:	25%
Nonaerosol:	8%
Tire sealant and inflator:	20%
Toile/urinal care products	
Aerosol:	10%
Nonaerosol:	3%
Undercoating, aerosol:	40%
Wood cleaners	
Aerosol:	17%
Nonaerosol:	4%

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9VAC5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the

product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 45-4A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 45-4A shall apply to the product only after the maximum recommended dilution has taken place.

D. For those consumer products that are registered under FIFRA, the effective date of the VOC standards in Table 45-4A shall be [~~May 1, 2010~~] August 1, 2011. Prior to that date, the standards of Table 45-3A in 9VAC5-45-430 A shall apply unless the product is exempt under the provisions of 9VAC5-45-410.

E. The following requirements shall apply to all charcoal lighter material products:

1. Effective as of the applicable compliance date specified in 9VAC5-45-480, no owner or other person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after [~~May 1, 2010~~] August 1, 2010, or (ii) manufacture for sale a charcoal lighter material product on or after [~~May 1, 2010~~] August 1, 2010, unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that it has been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9VAC5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the executive order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21). The provisions relating to LVP-VOC in 9VAC5-45-410 F and 9VAC5-45-420 C shall not apply to a charcoal lighter material subject to the requirements of 9VAC5-45-430 A and this subsection.

b. The board may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9VAC5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material that meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection that may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal that are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9VAC5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

F. [~~Requirements for~~ Provisions follow concerning] aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9VAC5-45-410 and 9VAC5-45-450, no owner or other person shall (i) sell, supply, offer for sale, or use an aerosol adhesive manufactured on or after [~~May 1, 2010~~] August 1, 2010, or (ii) manufacture for sale an aerosol adhesive [~~after May 1, 2010~~ on or after] August 1, 2010, that contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions for special purpose spray adhesive specified in 9VAC5-45-420 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9VAC5-45-420 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9VAC5-45-420 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9VAC5-45-430 A.

3. No person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after [~~May 1, 2010~~] August 1, 2010, or (ii) manufacture for sale on or after [~~May 1, 2010~~] August 1, 2010, an aerosol adhesive, that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9VAC5-45-460 D.

G. Effective as of the applicable compliance date specified in 9VAC5-45-480, no owner or other person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up," or "heavy build-up" are not specifically required as long as comparable terminology is used.

H. For a consumer product for which standards are specified under subsection A of this section, no owner or other person shall sell, supply, offer for sale, or manufacture for sale a consumer product that contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

I. The requirements of subsection H of this section shall not apply to an existing product formulation that complies with Table 45-4A or an existing product formulation that is reformulated to meet Table 45-4A, provided the ozone-depleting compound content of the reformulated product does not increase.

J. The requirements of subsection H of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9VAC5-45-440. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product; and

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the

board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-420 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-430 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. [~~The board may extend the time period in subdivision 1 c of this subsection if additional information is needed.~~] Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-420 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the

enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-430 A may not be used to generate surplus reductions-.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls

plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective~~;~~.

(2) The date the surplus reductions being traded are due to expire~~;~~.

(3) The amount (in pounds of VOCs) of surplus reductions that ~~are~~ is being transferred~~;~~.

(4) The total purchase price paid by the buyer for the surplus reductions~~;~~.

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions~~; and~~.

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-430 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales \times \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content$_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC content$_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-430 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-430 A is modified by the board in a future rule-making, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship~~;~~.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more)~~;~~.

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection~~; or~~.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-430 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-4A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-4A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-400 B.

9VAC5-45-460. Administrative requirements.

A. Provisions follow concerning product dating.

1. Each manufacturer of a consumer product subject to 9VAC5-45-430 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date.

2. A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of subdivision B 1 of this section, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where:

YY = two digits representing the year in which the product was manufactured, and

DDD = three digits representing the day of the year on which the product was manufactured, with 001 representing the first day of the year, 002 representing the second day of the year, and so forth (i.e., the Julian date).

3. The date or date code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by simply removing the cap or cover) without irreversibly disassembling a part of the container or packaging. For the purposes of this subdivision, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

4. This date or date code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9VAC5-45-430 A.

5. The requirements of this section shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. Additional provisions follow concerning product dating.

1. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9VAC5-45-430, an explanation of the date portion of the code must be filed with the board upon request by the board.

2. If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to 9VAC5-45-430 and the board has requested an explanation of any previous product dating code for that consumer product, then an explanation of the modified code shall be submitted to the board before any products displaying the modified code are sold, supplied, or offered for sale within the areas designated in 9VAC5-45-400 B.

3. No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

4. Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

C. Additional provisions follow concerning the most restrictive limit that applies to a product.

1. For FIFRA-registered insecticides manufactured before [~~May 1, 2011~~] August 1, 2011, notwithstanding the definition of "product category" in 9VAC5-45-420 C, if anywhere on the principal display panel, a representation is made that the product may be used as or is suitable for use as a consumer product for which a lower VOC limit is specified in 9VAC5-45-430 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

2. For consumer products manufactured on or after [~~May 1, 2010~~] August 1, 2010, and FIFRA-registered insecticides manufactured on or after [~~May 1, 2011~~] August 1, 2011, notwithstanding the definition of "product category" in 9VAC5-45-420 C, if anywhere on the container or packaging, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in 9VAC5-45-430 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9VAC5-45-510, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this article shall ensure that all products clearly display the following information on each product container that is manufactured on or after the effective date for the product category specified in Table 45-4A.

a. The product category as specified in 9VAC5-45-430 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9VAC5-45-430 A, except for energized electrical cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9VAC5-45-440, and the product exceeds the applicable VOC standard;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9VAC5-45-430 A, the product shall be labeled with the term "ACP" or "ACP product";

c. If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

d. If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision 1 of this subsection shall be displayed on the product container such

that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9VAC5-45-480. Compliance ~~schedule~~ schedules.

Affected owners or other persons shall comply with the provisions of this article as expeditiously as possible but in no case later than ~~August 1, 2010~~ [~~May 1, 2010.~~:

1. August 1, 2010, in the Northern Virginia and Fredericksburg VOC Emissions Control Areas; or

2. March 1, 2014, in the Richmond VOC Emissions Control Area.]

9VAC5-45-510. Notification, records and reporting.

A. The provisions of 9VAC5-45-50 (Notification, records and reporting) apply.

B. Upon 90 days written notice, the board may require a responsible party to register and report information for a consumer product the board may specify, including, but not limited to, all or part of the information specified in subdivisions 1 through 12 of this subsection. If the responsible party does not have or does not provide the information requested by the board, the board may require the reporting of this information by another owner or other person that has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

1. The company name of the responsible party and the party's address, telephone number, and designated contact person.

2. A showing satisfactory to the board under 9VAC5-170-60 B and C that supports any claim of confidentiality made pursuant to 9VAC5-170-60, §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law, and other applicable state confidentiality requirements .

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label.

4. The product category to which the consumer product belongs.

5. The applicable product forms listed separately.

6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both.

7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form.

8. For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection.

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

a. Total exempt compounds.

b. Total LVP-VOCs that are not fragrances.

c. Total all other carbon-containing compounds that are not fragrances.

d. Total all noncarbon-containing compounds.

e. Total fragrance.

f. For products containing greater than 2.0% by weight fragrance:

(1) The percent of fragrances that are LVP-VOCs; and

(2) The percent of fragrances that are all other carbon-containing compounds.

g. Total paradichlorobenzene.

10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

a. Each exempt compound; and

b. Each LVP-VOC that is not a fragrance.

11. If applicable, the weight percent composed of propellant for each product.

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percentage by weight of each ozone-depleting compound that is:

1. Listed in 9VAC5-45-430 H; and

2. Contained in a product subject to registration under subsection B of this section in an amount greater than 1.0% by weight.

D. Information submitted by responsible parties pursuant to this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

E. Provisions follow concerning special recordkeeping and reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9VAC5-45-430 A and contain perchloroethylene or

methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall keep records of the following information for products sold during each calendar year, beginning with the year of the applicable compliance date specified in 9VAC5-45-480, and ending with the year 2010:

a. The product brand name and a copy of the product label with legible usage instructions;

b. The product category to which the consumer product belongs;

c. The applicable product form, listed separately;

d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;

e. The weight percentage, to the nearest 0.10% of perchloroethylene and methylene chloride in the consumer product;

3. Upon 90 days written notice, the board may require a responsible party to report the information specified in subdivision 2 of this subsection.

4. Records required by subdivision 2 of this subsection shall be maintained by the responsible party for three calendar years from the date such records were created.

5. Alternative control plan notifications, records, and reporting shall be made as required by 9VAC5-45-440 and as required in the ACP agreement.

6. Innovative product notifications, records, and reporting shall be made as required by 9VAC5-45-450 and as required in the innovative products exemption notification letter.

Article 5
Emission Standards for Architectural and Industrial Maintenance Coatings

9VAC5-45-520. Applicability.

A. Except as provided in 9VAC5-45-530, the provisions of this article apply to any owner or other person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any owner or other person who applies or solicits the application of any architectural coating.

B. The provisions of this article apply only to owners and other persons in the Northern Virginia ~~and,~~ Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-530. Exemptions.

A. The provisions of this article do not apply to:

1. Any architectural coating that is sold or manufactured for use exclusively outside of the Northern Virginia ~~and,~~ Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas or for shipment to other manufacturers for reformulation or repackaging.

2. Any aerosol coating product.

3. Any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

B. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9VAC5-45-580. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; [~~or~~]

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area [~~.~~; or]

3. [~~May 1, 2010~~ March 1, 2014], in the Richmond VOC Emissions Control Area.

Article 6
Emission Standards for Adhesives and Sealants

9VAC5-45-620. Applicability.

A. Except as provided in 9VAC5-45-630, the provisions of this article apply to any owner or other person who supplies, sells, offers for sale, or manufactures for sale any adhesive, sealant, adhesive primer, or sealant primer that contains volatile organic compounds (VOC).

B. Except as provided in 9VAC5-45-630, the provisions of this article apply to any owner or other person who uses, applies for compensation, solicits the use of, requires the use of, or specifies the application of, any adhesive, sealant, adhesive primer, or sealant primer that contains volatile organic compounds.

C. The provisions of this article apply only to owners or other persons in the Northern Virginia ~~and,~~ Fredericksburg, and Richmond Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-630. Exemptions.

A. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale an adhesive, sealant, adhesive primer or sealant primer that does not comply with the VOC standards specified in 9VAC5-45-650 A provided that such manufacturer or distributor makes and keeps records demonstrating (i) that the adhesive, sealant, adhesive primer or sealant primer is intended for shipment and use outside of the volatile organic compound emissions control areas designated in 9VAC5-45-620 C, and (ii) that the manufacturer or distributor has taken

reasonable prudent precautions to assure that the adhesive, sealant, adhesive primer or sealant primer is not distributed to or within those applicable volatile organic compound emissions control areas. This exemption does not apply to any adhesive, sealant, adhesive primer or sealant primer that is sold, supplied, or offered for sale by any owner or other person to a retail outlet in those applicable volatile organic compound emissions control areas.

B. The provisions of this article do not apply to the sale or use of the following compounds:

1. Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory, provided records are maintained as required in 9VAC5-45-730 of this article;

2. Adhesives, sealants, adhesive primers and sealant primers that are subject to standards for volatile organic compounds pursuant to Article 3 (9VAC5-45-280 et seq.), Article 4 (9VAC5-45-400 et seq.) or Article 5 (9VAC5-45-520 et seq.) of this part;

3. Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied;

4. Cyanoacrylate adhesives;

5. Adhesives, sealants, adhesive primers or sealant primers (except for plastic cement welding adhesives and contact adhesives) that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of one pound or less; and

6. Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less.

C. The provisions of this article do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents as follows:

1. Tire repair operations, provided the label of the adhesive states "For tire repair only";

2. Assembly, repair and manufacturing operations for aerospace or undersea-based weapon systems;

3. Medical equipment manufacturing operations; and

4. Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992. Any owner or other person claiming exemption pursuant to this subdivision shall record and maintain monthly operational records sufficient to demonstrate compliance with this exemption in accordance with 9VAC5-45-730 of this article.

D. Except for the requirements listed in subdivisions 1 and 2 of this subsection, the provisions of this article do not apply if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the stationary source are less than 200 pounds per calendar year, or an equivalent volume.

1. The following requirements still apply:

a. 9VAC5-45-620 (Applicability);

b. [~~9VAC5-45-620~~ 9VAC5-45-650] A (concerning prohibition from selling, supplying, offering for sale, or manufacturing for sale, noncompliant adhesives, sealants, adhesive primers or sealant primers);

c. 9VAC5-45-690 (Compliance); and

d. 9VAC5-45-700 (Compliance schedules).

2. Any owner or other person claiming exemption pursuant to this subsection shall record and maintain monthly operational records sufficient to demonstrate compliance and in accordance with 9VAC5-45-730 of this article.

E. The provisions of 9VAC5-45-650 B and 9VAC5-45-650 D do not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided that the total volume of noncompliant adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per calendar year. Any owner or other person claiming exemption pursuant to this subsection shall record and maintain monthly operational records sufficient to demonstrate compliance with this exemption in accordance with 9VAC5-45-730.

F. The provisions of 9VAC5-45-650 A do not apply to the sale of any adhesive, sealant, adhesive primer or sealant primer to an owner or other person using add-on air pollution control equipment pursuant to the provisions of 9VAC5-45-660 to comply with the requirements of this article, provided that the seller makes and keeps records in accordance with 9VAC5-45-730 E.

9VAC5-45-640. 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 herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms Defined.

"Acrylonitrile-butadiene-styrene or ABS welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerosol adhesive" means an adhesive packaged as an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for handheld application without the need for ancillary hoses or spray equipment.

"Aerospace component" means for the purposes of this article, the fabricated part, assembly of parts or completed unit of any aircraft, helicopter, missile, or space vehicle, including passenger safety equipment.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes, and their appurtenances. Appurtenances to an architectural structure include, but are not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

"ASTM" means the American Society for Testing and Materials.

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass using an adhesive/sealant. This primer improves the adhesion to pinch weld and blocks ultraviolet light.

"CARB" means the California Air Resources Board.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic" or "CPVC plastic" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a CPVC marking.

"Chlorinated polyvinyl chloride welding adhesive" or "CPVC welding adhesive" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used to remove a loosely held uncured (i.e., not dry to the touch) adhesive or sealant from a substrate, or clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that: (i) is designed for application to both surfaces to be bonded together, (ii) is allowed to dry before the two surfaces are placed in contact with each other, (iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and (iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. Contact bond adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact bond adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Dry wall installation" means the installation of gypsum dry wall to studs or solid surfaces using an adhesive formulated for that purpose.

"Fiberglass" means a material consisting of extremely fine glass fibers.

"Flexible vinyl" means nonrigid polyvinyl chloride plastic with at least 5.0% by weight plasticizer content.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a nonporous substrate, such as flexible vinyl, are excluded from this category.

"Laminate" means a product made by bonding together two or more layers of material.

"Low-solids adhesive, sealant or primer" means any product that contains 120 grams or less of solids per liter of material.

"Marine deck sealant" or "marine deck sealant primer" means any sealant or sealant primer labeled for application to wooden marine decks.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to, drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

"Nonmembrane roof installation/repair adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not

intended for the installation of prefabricated single-ply flexible roofing membrane, including, but not limited to, plastic or asphalt roof cement, asphalt roof coating, and cold application cement.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

["Ozone season" means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.]

"Panel installation" means the installation of plywood, predecorated hardboard (or tileboard), fiberglass reinforced plastic, and similar predecorated or nondecorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic cement welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic cement welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Plastic foam" means foam constructed of plastics.

"Plasticizer" means a material, such as a high boiling point organic solvent, that is incorporated into a vinyl to increase its flexibility, workability, or distensibility.

"Plastics" means synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, and/or reinforcers and are capable of being molded, extruded, cast into various shapes and films or drawn into filaments.

"Polyvinyl chloride plastic" or "PVC plastic" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, wood, paper, and corrugated paperboard.

"Propellant" means a fluid under pressure that expels the contents of a container when a valve is opened.

"Reactive diluent" means a liquid that is a reactive organic compound during application and one in that, through chemical and/or physical reactions, such as polymerization, 20% or more of the reactive organic compound becomes an integral part of a finished material.

"Roadway sealant" means any sealant intended by the manufacturer for application to public streets, highways and other surfaces including, but not limited to, curbs, berms, driveways, and parking lots.

"Rubber" means any natural or manmade rubber substrate, including but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene and ethylene propylene diene terpolymer.

"SCAQMD" means the South Coast Air Quality Management District, a part of the California Air Resources Board, which is responsible for the regulation of air quality in the state of California.

"Sealant" means any material with adhesive properties that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces. Sealants include sealant primers and caulks.

"Sealant primer" means any product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

"Sheet-applied rubber installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene propylene diene terpolymer, that is field applied to a building roof using one layer of membrane material.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane sealant" means any sealant labeled for application to single-ply roof membrane.

"Solvent" means organic compounds that are used as diluents, thinners, dissolvers, viscosity reducers, cleaning agents or other related uses.

"Structural glazing adhesive" means any adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

"Subfloor installation" means the installation of subflooring material over floor joists, including the construction of any load bearing joists. Subflooring is covered by a finish surface material.

"Surface preparation solvent" means a solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of a primer, adhesive or sealant.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

"Tire tread adhesive" means any adhesive intended by the manufacturer for application to the back of precure tread rubber and to the casing and cushion rubber. Tire tread adhesive may also be used to seal buffed tire casings to prevent oxidation while the tire is being prepared for a new tread.

"Traffic marking tape" means preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including but not limited to curbs, berms, driveways, and parking lots.

"Traffic marking tape adhesive primer" means any primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10-20.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

9VAC5-45-650. Standard for volatile organic compounds.

A. Except as provided in 9VAC5-45-630 and subsection H of this section, no owner or other person shall (i) sell, supply or offer for sale any adhesive, sealant, adhesive primer, or sealant primer manufactured on or after the applicable compliance date specified in 9VAC5-45-700, or (ii) manufacture for sale any adhesive, sealant, adhesive primer, or sealant primer on or after the date specified in 9VAC5-45-700, which contains volatile organic compounds in excess of the limits specified in Table 45-6A.

Table 45-6A

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates

Adhesive, sealant, adhesive primer or sealant primer category	VOC content limit (grams VOC per liter*)
Adhesives	
ABS welding	400
Ceramic tile installation	130
Computer diskette jacket manufacturing	850
Contact bond	250
Cove base installation	150
CPVC welding	490
Indoor floor covering installation	150
Metal to urethane/rubber molding or casting	850
Multipurpose construction	200
Nonmembrane roof installation/repair	300
Other plastic cement welding	510
Outdoor floor covering installation	250
PVC welding	510
Single-ply roof membrane installation/repair	250
Structural glazing	100
Thin metal laminating	780
Tire retread	100
Perimeter bonded sheet vinyl flooring installation	660
Waterproof resorcinol glue	170
Sheet-applied rubber installation	850
Sealants	
Architectural	250
Marine deck	760
Nonmembrane roof installation/repair	300

Roadway	250
Single-ply roof membrane	450
Other	420
Adhesive Primers	
Automotive glass	700
Plastic cement welding	650
Single-ply roof membrane	250
Traffic marking tape	150
Other	250
Sealant Primers	
Non-porous architectural	250
Porous architectural	775
Marine deck	760
Other	750
Adhesives Applied to the Listed Substrate	
Flexible vinyl	250
Fiberglass	200
Metal	30
Porous material	120
Rubber	250
Other substrates	250

*The VOC content is determined using the weight of volatile compounds, less water and exempt compounds, as specified in 9VAC5-45-710 of this article.

B. Except as provided in 9VAC5-45-630 B through E, in subsection G of this section, and in 9VAC5-45-660, no person shall use, or apply for compensation, any adhesive, sealant, adhesive primer or sealant primer in excess of the applicable VOC content limits specified in Table 45-6A.

C. The VOC content limits in Table 45-6A for adhesives applied to particular substrates shall apply as follows.

1. If an owner or other person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 45-6A, such specific limit is applicable rather than an adhesive-to-substrate limit.

2. If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

D. No owner or other person shall use a surface preparation or cleanup solvent containing VOC unless:

1. The VOC content of the surface preparation solvent is less than 70 grams per liter, except as provided for single-ply roofing in subdivision 2 of this subsection;

2. The composite vapor pressure, excluding water and exempt compounds, of the surface preparation solvent used for applying single-ply roofing does not exceed 45 mm Hg at 20°C;

3. The composite vapor pressure of the solvent used for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces other than spray application equipment is less than 45 mm Hg at 20°C, except as provided in subdivision 4 of this subsection; and

4. For the removal of adhesives, sealants, adhesive primers or sealant primers from parts of spray application equipment, the removal is performed as follows:

a. In an enclosed cleaning system, or equivalent cleaning system as determined by the test method identified in 9VAC5-45-710 I;

b. Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material; or

c. Parts containing dried adhesive may be soaked in a solvent if (i) the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm Hg at 20°C, and (ii) the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

E. Any owner or other person using adhesives, sealants, adhesive primers, sealant primers, surface preparation or clean-up solvents subject to the provisions of this article shall store or dispose of all absorbent materials, such as cloth or paper, that are moistened with adhesives, sealants, primers or solvents subject to the provisions of this article, in nonabsorbent containers that shall be closed except when placing materials in or removing materials from the container.

F. No owner or other person shall solicit the use, require the use or specify the application of any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent if such use or application results in a violation of the provisions of this article. This prohibition shall apply to all written or oral contracts under which any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent subject to this article is to be used at any location within the areas designated in 9VAC5-45-620 C.

G. The standards for single-ply [~~roofing~~] roof membrane installation and repair adhesive, single-ply [~~roofing~~] roof membrane sealant, and single-ply [~~roofing~~] roof membrane adhesive primer in Table 45-6A shall only apply [~~according to the following schedule~~] as follows:

1. ~~During the ozone seasons, or portions thereof, between August 1, 2010, and September 30, 2011, inclusive; and~~ [~~From May 1, 2010 to September 30, 2010, inclusive;~~ In the Northern Virginia and Fredericksburg VOC Emissions

Control Areas: during the ozone seasons, or portions thereof, between August 1, 2010, and September 30, 2011, and on and after January 1, 2012; and]

2. ~~On and after January 1, 2012.~~ [~~From May 1, 2011, to September 30, 2011; and (insert a date corresponding to the first day of the fifth month after the month of the effective date) and September 30, 2011; and~~ In the Richmond VOC Emissions Control Area: during the ozone season, or portion thereof, between March 1, 2014, and September 30, 2014, and [~~3. On and~~] after January 1, [~~2012~~ 2015].

H. The provisions of subsection A of this section and the provisions of 9VAC5-45-730 E do not apply to the sale, supply, offer for sale, or manufacture for sale of single-ply roof membrane installation and repair adhesive, single-ply roof membrane sealant, and single-ply roof membrane adhesive primer prior to January 1, 2012.

9VAC5-45-700. Compliance ~~schedule~~ schedules.

Affected owners or other persons shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~August 1, 2010~~ [~~May 1, 2010.~~:

1. August 1, 2010, in the Northern Virginia and Fredericksburg VOC Emissions Control Areas; or

2. March 1, 2014, in the Richmond VOC Emissions Control Area.]

9VAC5-45-710. Test methods and procedures.

A. The provisions of 9VAC5-45-30 (Emission testing) apply.

B. Except as provided in subsections D, E and F of this section, the VOC and solids content of all nonaerosol adhesives, adhesive primers and cleanup solvents shall be determined using either Reference Method 24 or SCAQMD "Determination of Volatile Organic Compounds (VOC) In Various Materials" (see 9VAC5-20-21).

C. The organic content of exempt organic compounds shall be determined using ASTM "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (see 9VAC5-20-21), as applicable.

D. The VOC content of any plastic welding cement adhesive or primer shall be determined using SCAQMD "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" (see 9VAC5-20-21).

E. To determine if a diluent is a reactive diluent, the percentage of the reactive organic compound that becomes an integral part of the finished materials shall be determined using SCAQMD "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" (see 9VAC5-20-21).

F. The composite vapor pressure of organic compounds in cleaning materials shall be determined by quantifying the amount of each compound in the blend using [~~gas chromatographic analysis (ASTM "Standard Practice for Packed Column Gas Chromatography")~~] ASTM "Standard Practice for Packed Column Gas Chromatography" for organics and ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" for water content (see 9VAC5-20-21), as applicable, and the following equation:

$$Pp_c = \frac{\sum_{i=1}^{n} (W_i)(VP_i) / Mw_i}{W_w / Mw_w + \sum_{i=1}^{n} W_e / Mw_e + \sum_{i=1}^{n} W_i / Mw_i}$$

where:

Pp_c = VOC composite partial pressure at 20ºC, in mm Hg.

W_i = Weight of the "i"th VOC compound, in grams, as determined by ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

W_w = Weight of water, in grams as determined by ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" (see 9VAC5-20-21).

W_e = Weight of the "i"th exempt compound, in grams, as determined by ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

Mw_i = Molecular weight of the "i"th VOC compound, in grams per g-mole, as given in chemical reference literature.

Mw_w = Molecular weight of water, 18 grams per g-mole.

Mw_e = Molecular weight of the "i"th exempt compound, in grams per g-mole, as given in chemical reference literature.

Vp_i = Vapor pressure of the "i"th VOC compound at 20ºC, in mm Hg, as determined by subsection G of this section.

G. The vapor pressure of each single component compound may be determined from ASTM "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope " (see 9VAC5-20-21), from chemical reference literature or from additional sources acceptable to the board.

H. If air pollution control equipment is used to meet the requirements of 9VAC5-45-650, the owner or operator shall make the following determinations:

1. The measurement of capture efficiency shall be conducted and reported in accordance with the EPA Technical Document "Guidelines for Determining Capture Efficiency" (see 9VAC5-20-21).

2. The control efficiency shall be determined in accordance with Reference Methods 25, 25A, 25B or CARB Method 100 (see 9VAC5-20-21), as appropriate.

I. The active and passive solvent losses from spray gun cleaning systems shall be determined using SCAQMD's "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems" (see 9VAC5-20-21). The test

solvent for this determination shall be any lacquer thinner with a minimum vapor pressure of 105 mm of Hg at 20ºC, and the minimum test temperature shall be 15ºC.

J. For adhesives that do not contain reactive diluents, the VOC content of adhesive in grams per liter, less water and exempt compounds, shall be calculated according to the following equation:

$$VOC = \frac{Ws - Ww - We}{Vm - Vw - Ve}$$

where:

VOC = VOC content of adhesive, in grams per liter.

Ws = weight of volatile compounds, in grams.

Ww = weight of water, in grams.

We = weight of exempt compounds, in grams.

Vm = volume of material, in liters.

Vw = volume of water, in liters.

Ve = volume of exempt compounds, in liters.

K. For adhesives that contain reactive diluents, the VOC content of the adhesive is determined after curing. The VOC content of adhesive in grams per liter, less water and exempt compounds, shall be calculated according to the following equation:

$$VOC = \frac{Wrs - Wrw - Wre}{Vrm - Vrw - Vre}$$

where:

VOC = VOC content of adhesive, in grams per liter.

Wrs = weight of volatile compounds not consumed during curing, in grams.

Wrw = weight of water not consumed during curing, in grams.

Wre = weight of exempt compounds not consumed during curing, in grams.

Vrm = volume of material not consumed during curing, in liters.

Vrw = volume of water not consumed during curing, in liters.

Vre = volume of exempt compounds not consumed during curing, in liters.

L. The VOC content of materials, in grams per liter, shall be calculated according to the following equation:

$$VOC = \frac{Ws - Ww - We}{Vm}$$

where:

VOC = VOC content of materials, in grams per liter.

Ws = weight of volatile compounds, in grams.

Ww = weight of water, in grams.

We = weight of exempt compounds, in grams.

Vm = volume of material, in liters.

M. Percent VOC by weight shall be calculated according to the following equation:

$$\%\ VOC\ by\ weight = \frac{Wv}{W} \times 100$$

where:

Wv = weight of VOC in grams.

W = weight of material in grams.

VA.R. Doc. No. R08-1111; Filed August 7, 2013, 8:33 a.m.

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-450).**

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

Effective Date: Effective upon filing notice of federal Environmental Protection Agency approval with the Registrar of Regulations.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

Summary:

The amendments designate an approximately one-mile segment of the Dan River in Virginia and its tributaries in Virginia near the Virginia/North Carolina state line as public water supply. A raw water intake intended to serve Roxboro, North Carolina, and the North Carolina counties of Person and Caswell is proposed by the state of North Carolina for the Dan River near the town of Milton, North Carolina, approximately 10 miles downriver from Danville, Virginia. North Carolina water quality standards require public water supply protections to extend 10 miles upriver from the intake. The State Water Control Board received a petition to designate as public water supply a sufficient portion of the Dan River and its tributaries to complete the 10-mile run of the river as required by North Carolina water quality standards.

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.

9VAC25-260-450. Roanoke River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	III	PWS	Lake Gaston and the John Kerr Reservoir in Virginia and their tributaries in Virginia, unless otherwise designated in this chapter (not including the Roanoke or the Dan Rivers). The Roanoke River Service Authority's water supply intake is in this section.
1a	III		Dockery Creek and its tributaries to their headwaters.
2	III		Dan River and its tributaries from the John Kerr Reservoir to the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line, unless otherwise designated in this chapter.
2a	III	PWS	Dan River and its tributaries from South Boston's raw water intake to points 5 miles upstream.
2b	III	PWS	Banister River and its tributaries from Burlington Industries' inactive raw water intake (about 2000 feet downstream of Route 360) inclusive of the Town of Halifax intake at the Banister Lake dam upstream to the Pittsylvania/Halifax County Line (designation for main stem and tributaries ends at the county line).
2c			(Deleted)
2d	III	PWS	Cherrystone Creek and its tributaries from Chatham's raw water intake upstream to their headwaters.
2e	III	PWS	Georges Creek from Gretna's raw water intake upstream to its headwaters.
2f	III	PWS	Banister River and its tributaries from point below its confluence with Bearskin Creek (at latitude 36°46'15"; longitude 79°27'08") just east of Route 703, upstream to their headwaters.
2g	III	PWS	Whitethorn Creek and its tributaries from its confluence with Georges Creek upstream to their headwaters.
3	III		Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N.C., unless otherwise designated in this chapter.
	III	PWS	Dan River and its tributaries from the Virginia-North Carolina state line just south of Danville to points 1.34 miles upstream and the first unnamed tributary to Hogans Creek from the Virginia-North Carolina state line to a point 0.45 mile upstream.
3a	III	PWS	Dan River and its tributaries from the Schoolfield Dam including the City of Danville's main water intake located just upstream of the Schoolfield Dam, upstream to the Virginia-North Carolina state line.
3b	IV	PWS	Cascade Creek and its tributaries.
3c	IV	PWS	Smith River and its tributaries from the Virginia-North Carolina state line to, but not including, Home Creek.
3d	VI	PWS	Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
	VI	PWS	Natural Trout Waters in Section 3d
	ii		Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
3e	IV		Philpott Reservoir, Fairystone Lake and their tributaries.
	V		Stockable Trout Waters in Section 3e

	v		Otter Creek from its confluence with Rennet Bag Creek (Philpott Reservoir) to its headwaters.
	v		Smith River (Philpott Reservoir portion) from the Philpott Dam (river mile 46.80) to river mile 61.14, just above the confluence with Small Creek.
	v		Rennet Bag Creek from its confluence with the Smith River to the confluence of Long Branch Creek.
	VI		Natural Trout Waters in Section 3e
	ii		Brogan Branch from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
	ii		Rennet Bag Creek from the confluence of Long Branch Creek upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
3f	IV	PWS	North Mayo River and South Mayo River and their tributaries from the Virginia-North Carolina state line to points 5 miles upstream.
3g	IV		Interstate streams in the Dan River watershed above the point where the Dan crosses the Virginia-North Carolina state line just east of Draper, N. C., (including the Mayo and the Smith watersheds), unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3g
	vi		Dan River from the Virginia-North Carolina state line upstream to the Pinnacles Power House.
	***		Little Dan River from its confluence with the Dan River 7.8 miles upstream.
	v		Smith River from river mile 61.14 (just below the confluence of Small Creek), to Route 704 (river mile 69.20).
	VI		Natural Trout Waters in Section 3g
	ii		Dan River from Pinnacles Power House to Townes Dam.
	ii		Dan River from headwaters of Townes Reservoir to Talbott Dam.
	iii		Little Dan River from 7.8 miles above its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		North Prong of the North Fork Smith River from its confluence with the North Fork Smith River upstream including all named and unnamed tributaries.
	ii		North Fork Smith River from its confluence with the Smith River upstream including all named and unnamed tributaries.
	iii		Smith River from Route 704 (river mile 69.20) to Route 8 (river mile 77.55).
	ii		Smith River from Route 8 (approximate river mile 77.55) upstream including all named and unnamed tributaries.
	ii		South Mayo River from river mile 38.8 upstream including all named and unnamed tributaries.
3h	IV	PWS	South Mayo River and its tributaries from the Town of Stuart's raw water intake 0.4 mile upstream of its confluence with the North Fork Mayo River to points 5 miles upstream.
	VI		Natural Trout Waters in Section 3h

	iii		Brushy Fork from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Lily Cove Branch from its confluence with Rye Cove Creek upstream including all named and unnamed tributaries.
	iii		Rye Cove Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		South Mayo River from river mile 33.8 upstream including all named and unnamed tributaries.
3i	IV	PWS	Hale Creek and its tributaries from the Fairy Stone State Park's raw water intake 1.7 miles from its confluence with Fairy Stone Lake upstream to its headwaters.
3j	VI	PWS	Smith River and its tributaries from the Henry County Public Service Authority's raw water intake about 0.2 mile upstream of its confluence with Town Creek to points 5 miles upstream.
4	III		Intrastate tributaries to the Dan River above the Virginia-North Carolina state line just east of Draper, North Carolina, to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	vi		Browns Dan River from the intersection of Routes 647 and 646 to its headwaters.
	vi		Little Spencer Creek from its confluence with Spencer Creek to its headwaters.
	vi		Poorhouse Creek from its confluence with North Fork South Mayo River upstream to Route 817.
	***		Rock Castle Creek from its confluence with the Smith River upstream to Route 40.
	VI		Natural Trout Waters in Section 4
	ii		Barnard Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Big Cherry Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		Camp Branch from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Haunted Branch from its confluence with Barnard Creek upstream including all named and unnamed tributaries.
	ii		Hookers Creek from its confluence with the Little Dan River upstream including all named and unnamed tributaries.
	iii		Ivy Creek from Coleman's Mill Pond upstream to Route 58 (approximately 2.5 miles).
	iii		Little Ivy Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Little Rock Castle Creek from its confluence with Rock Castle Creek upstream including all named and unnamed tributaries.
	ii		Maple Swamp Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.

	iii		Mayberry Creek from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		North Fork South Mayo River from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	vi**		Patrick Springs Branch from its confluence with Laurel Branch upstream including all named and unnamed tributaries.
	iii		Polebridge Creek from Route 692 upstream including all named and unnamed tributaries.
	ii		Poorhouse Creek from Route 817 upstream including all named and unnamed tributaries.
	ii		Rhody Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Rich Creek from Route 58 upstream including all named and unnamed tributaries.
	ii		Roaring Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		Rock Castle Creek from Route 40 upstream including all named and unnamed tributaries.
	iii		Round Meadow Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Sawpit Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Shooting Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
	vi**		Spencer Creek from Route 692 upstream including all named and unnamed tributaries.
	iii		Squall Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Tuggle Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Widgeon Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
4a	III	PWS	Intrastate tributaries (includes Beaver Creek, Little Beaver Creek, and Jones Creek, for the City of Martinsville) to the Smith River from DuPont's (inactive) raw water intake to points 5 miles upstream from Fieldcrest Cannon's raw water intake.
4b	III	PWS	Marrowbone Creek and its tributaries from the Henry County Public Service Authority's raw water intake (about 1/4 mile upstream from Route 220) to their headwaters.
4c	III	PWS	Leatherwood Creek and its tributaries from the Henry County Public Service Authority's raw water intake 8 miles upstream of its confluence with the Smith River to points 5 miles upstream.
5	IV	PWS	Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam unless otherwise designated in this chapter.

5a	III		Tributaries to the Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5a
	vi		Day Creek from Route 741 to its headwaters.
	VI		Natural Trout Waters in Section 5a
	iii		Gunstock Creek from its confluence with Overstreet Creek upstream including all named and unnamed tributaries.
	ii		Overstreet Creek from its confluence with North Otter Creek upstream including all named and unnamed tributaries.
5b	III	PWS	Spring Creek from Keysville's raw water intake upstream to its headwaters.
5c	III	PWS	Falling River and its tributaries from a point just upstream from State Route 40 (the raw water source for Dan River, Inc.) to points 5 miles upstream and including the entire Phelps Creek watershed which contains the Brookneal Reservoir.
5d	III		Falling River and its tributaries from 5 miles above Dan River, Inc. raw water intake to its headwaters.
5e	III	PWS	Reed Creek and its tributaries from Altavista's raw water intake upstream to their headwaters.
5f	III	PWS	Big Otter River and its tributaries from Bedford's raw water intake to points 5 miles upstream, and Stony Creek and Little Stony Creek upstream to their headwaters.
	VI	PWS	Natural Trout Waters in Section 5f
	ii		Little Stony Creek from 1 mile above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Stony Creek from the Bedford Reservoir upstream including all named and unnamed tributaries.
5g	III		Big Otter River and its tributaries from 5 miles above Bedford's raw water intake upstream to their headwaters.
5h	III		Ash Camp Creek and that portion of Little Roanoke Creek from its confluence with Ash Camp Creek to the Route 47 bridge.
5i	III	PWS	The Roanoke River and its tributaries from the Town of Altavista's raw water intake, 0.1 mile upstream from the confluence of Sycamore Creek, to points 5 miles upstream.
5j	III	PWS	Big Otter River and its tributaries from the Campbell County Utilities and Service Authority's raw water intake to points 5 miles upstream.
6	IV	pH-6.5-9.5	Roanoke River from a point (at latitude 37°15'53"; longitude 79°54'00") 5 miles above the headwaters of Smith Mountain Lake upstream to Salem's #1 raw water intake.
	V		Stockable Trout Waters in Section 6
	***	pH-6.5-9.5	Roanoke River from its junction from Routes 11 and 419 to Salem's #1 raw water intake.
6a	III	NEW-1	Tributaries of the Roanoke River from Leesville Dam to Niagra Reservoir, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6a
	vi		Gourd Creek from 1.3 miles above its confluence with Snow Creek to its

			headwaters.
	vi		Maggodee Creek from Boones Mill upstream to Route 862 (approximately 3.8 miles).
	vii		South Fork Blackwater River form its confluence with the Blackwater River upstream to Roaring Run.
	vi		South Prong Pigg River from its confluence with the Pigg River to its headwaters.
	VI		Natural Trout Waters in Section 6a
	iii		Daniels Branch from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
	ii		Green Creek from Roaring Run upstream including all named and unnamed tributaries.
	ii		Pigg River from 1 mile above the confluence of the South Prong Pigg River upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
6b			(Deleted)
6c	III	PWS	Falling Creek Reservoir and Beaverdam Reservoir.
6d	IV		Tributaries of the Roanoke River from Niagra Reservoir to Salem's #1 raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6d
	vii		Tinker Creek from its confluence with the Roanoke River north to Routes 11 and 220.
	VI		Natural Trout Waters in Section 6d
	iii		Glade Creek from its junction with Berkley Road NE to the confluence of Coyner Branch.
6e	IV	PWS	Carvin Cove Reservoir and its tributaries to their headwaters.
6f	IV	PWS, NEW-1	Blackwater River and its tributaries from the Town of Rocky Mount's raw water intake (just upstream of State Route 220) to points 5 miles upstream.
6g	IV	PWS	Tinker Creek and its tributaries from the City of Roanoke's raw water intake (about 0.4 mile downstream from Glebe Mills) to points 5 miles upstream.
6h	IV	PWS	Roanoke River from Leesville Dam to Smith Mountain Dam (Gap of Smith Mountain), excluding all tributaries to Leesville Lake.
6i	IV	PWS	Roanoke River from Smith Mountain Dam (Gap of Smith Mountain) upstream to a point (at latitude 37°15'53"; longitude 79°54'00" and its tributaries to points 5 miles above the 795.0 foot contour (normal pool elevation) of Smith Mountain Lake.
7	IV	pH-6.5-9.5,ESW-2	Roanoke River and its tributaries, unless otherwise designated in this chapter, from Salem's #1 raw water intake to their headwaters.
	V		Stockable Trout Waters in Section 7
	vi	pH-6.5-9.5	Elliott Creek from the confluence of Rocky Branch to its headwaters.
	vi	pH-6.5-9.5	Goose Creek from its confluence with the South Fork Roanoke River to its headwaters.
	vi	pH-6.5-9.5	Mill Creek from its confluence with Bottom Creek to its headwaters.

	***	pH-6.5-9.5	Roanoke River from 5 miles above Salem's #2 raw water intake to the Spring Hollow Reservoir intake (see section 7b).
	vi	pH-6.5-9.5	Smith Creek from its confluence with Elliott Creek to its headwaters.
	vi	pH-6.5-9.5	South Fork Roanoke River from 5 miles above the Spring Hollow Reservoir intake (see section 7b) to the mouth of Bottom Creek (river mile 17.1).
	VI		Natural Trout Waters in Section 7
	ii	pH-6.5-9.5	Big Laurel Creek from its confluence with Bottom Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Bottom Creek from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lick Fork (Floyd County) from its confluence with Goose Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Mill Creek from its confluence with the North Fork Roanoke River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Purgatory Creek from Camp Alta Mons upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Spring Branch from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
7a	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from Salem's #1 raw water intake to points 5 miles upstream from Salem's #2 raw water intake.
	V	PWS	Stockable Trout Waters in Section 7a
	***	pH-6.5-9.5	Roanoke River from Salem's #1 raw water intake to a point 5 miles upstream from Salem's #2 raw water intake.
7b	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from the Spring Hollow Reservoir intake upstream to points 5 miles upstream.
	V	PWS	Stockable Trout Waters in Section 7b
	***	pH-6.5-9.5, hh	Roanoke River from the Spring Hollow Reservoir intake to the Montgomery County line.
	vi	pH-6.5-9.5	South Fork Roanoke River from its confluence with the Roanoke River to 5 miles above the Spring Hollow Reservoir intake.

VA.R. Doc. No. R09-24; Filed August 6, 2013, 11:05 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9VAC25-590-10, 9VAC25-590-170, 9VAC25-590-190, 9VAC25-590-200, Appendix IX; adding 9VAC25-590-105, Appendix XIII).**

Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia; 40 CFR Part 280.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: October 10, 2013.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia provides the legal basis for the regulations in 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements). Specifically, § 62.1-44.34:9 of the Code of Virginia authorizes the State Water Control Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks (USTs) in accordance with federal laws and regulations. Further, § 62.1-44.34:12 of the Code of Virginia provides the direct authority to the State Water Control Board to promulgate regulations that conform to the federal UST

financial responsibility requirements of 42 USC § 6991b(d) and any regulations adopted thereunder.

Purpose: The rationale for the addition of the certificate of deposit to 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements) is to provide additional flexibility for the owners or operators of USTs when meeting their financial responsibility requirements. This amendment will provide another mechanism for owners and operators of USTs to prove financial responsibility. Currently, many owners and operators that use a letter of credit are required by the bank to collateralize the letter of credit with a certificate of deposit, and these banks charge a fee to establish the letter of credit and an annual maintenance fee to carry it. These fees can be burdensome to individuals and businesses having funds tied up as collateral and not available for business needs. Additionally, the value of the certificate of deposit will also increase over time providing more funds for business needs.

Rationale for Using Fast-Track Process: The proposed amendments are expected to be noncontroversial and therefore justify using the fast-track rulemaking process. The amendments to this regulation will allow owners or operators of USTs to use certificates of deposits to meet their financial responsibility requirements under 9VAC25-590.

Substance: This regulatory action amends 9VAC25-640 to add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for owners and operators of USTs. 9VAC25-590-105 and Appendix XIII are added to this regulation to provide the requirements necessary for owners or operators that choose to use a CD for their financial responsibility requirements. Other sections within the regulation are amended to add CDs to the list of mechanisms that may be used for financial responsibility.

Issues: The public will benefit from these amendments because they ensure that owners or operators of USTs have more options for establishing their financial responsibility for taking corrective action and for compensating third parties for injury or property damage from accidental releases arising from the operation of petroleum USTs. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments to 9VAC25-590.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for owners and operators of Petroleum Underground Storage Tanks (USTs). Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. State Water Control Law (Section 62.1-44.34:12 A) requires that owners and operators of USTs annually demonstrate and maintain evidence of financial responsibility for taking corrective action and for compensating third parties in case of leaks. These regulations specify the financial responsibility requirements for USTs. Under the current regulations, owners and operators may use any one or combination of the following mechanisms to demonstrate financial responsibility: (1) financial test of self-insurance, (2) guarantee, (3) insurance, (4) surety bond, (5) letter of credit, or (6) trust fund. Further details are specified in the regulations. The Board proposes to add a CD to the list acceptable mechanisms.

Banks charge a fee to establish a letter of credit and an annual maintenance fee to carry it. Additionally, the Department of Environmental Quality (DEQ) has found that many owners and operators of USTs who use a letter of credit are required by the bank to collateralize the letter of credit with a CD. Thus, directly permitting a CD as an acceptable mechanism could save costs for owners and operators who currently use a letter of credit.

According to DEQs 2012 survey of banks in Virginia that currently issue letters of credit to owners and operators, the cost to set up and maintain a new CD will be either no cost or have a very low fee compared to the charge for setting up and maintaining letters of credit. Owners and operators who can afford to put up the full amount of cash required to fund their financial responsibility requirement may not have to pay any origination or annual fees to the bank and they would earn interest on the CD. Many banks currently charge application fees of 1.0% to 1.5% of the total letter of credit amount with a minimum fee of $450 to $500. Additionally, banks charge owners and operators an annual fee of $450 to $500 on the anniversary date of the letter of credit.[1] Letters of credit that are secured with real estate also have additional costs associated with the loan.

If owners and operators switch from a letter of credit to a certificate of deposit mechanism, the total cost savings could be substantial. Since allowing the use of a CD to demonstrate financial responsibility potentially reduces costs for some owners and operators with no apparent reduction in assurance of financial responsibility, the proposed amendment should produce a net benefit.

Businesses and Entities Affected. The proposed amendment potentially affects the approximately 3,000 petroleum underground storage tank owners and operators in the Commonwealth, as well as their banks.[2]

Localities Particularly Affected. As there are petroleum underground storage tanks throughout the Commonwealth, the proposed amendment does not particularly affect a few specific localities.

Projected Impact on Employment. The proposed amendment will not likely have a large impact on employment.

Effects on the Use and Value of Private Property.

The proposed amendment will likely result in some owners and operators of USTs who currently use another mechanism

to demonstrate financial responsibility to switch to using a CD. Those owners and operators who currently use a letter of credit seem particularly likely to switch in that it will very likely lower their costs.

Small Businesses: Costs and Other Effects. The proposed amendment will likely reduce costs for small owners and operators of USTs who currently use a letter of credit to demonstrate financial responsibility.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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. T The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] Data source: Department of Environmental Quality

[2] Ibid

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

Summary:

The amendments to 9VAC25-640 (Petroleum Underground Storage Tank Financial Responsibility Requirements) (i) add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for owners or operators of underground storage tanks (USTs) and (ii) provide requirements necessary for owners or operators that choose to use a CD for their financial responsibility requirements. Since the UST program is federal and the State Water Control Board must have federal Environmental Protection Agency (EPA) approval to administer it, the addition of the CD as a mechanism may have to be approved by EPA, as it is not in the federal regulation.

9VAC25-590-10. Definitions.

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

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; 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 which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V (9VAC25-580-190 et seq.) and VI (9VAC25-580-230 et seq.) of 9VAC25 Chapter 580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements. The term does not include those actions normally associated with closure or change in service as set out in Part VII (9VAC25-580-320 et seq.) of 9VAC25 Chapter 580 or the replacement of an underground storage tank.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission

(SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Group self-insurance pool" or "pool" means a pool organized by two or more owners and/or operators of underground storage tanks for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:12 of the Code of Virginia.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state, or other special purpose government which provides essential services.

"Member" means an owner or operator of an underground storage tank who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the person ~~who~~ that is obtaining or has obtained financial assurances.

"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.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"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 an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means a person that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250, including a guarantor, insurer, group self-

insurance pool, surety, ~~or~~ issuer of a letter of credit or certificate of deposit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank at the time the release is reported to the board.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9VAC25-580" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation promulgated by the board.

9VAC25-590-105. Certificate of deposit.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40, wholly or in part, by assigning all rights, title, and interest of a certificate of deposit to the State Water Control Board, Commonwealth of Virginia. The owner or operator shall maintain the certificate of deposit until the requirements of 9VAC25-590-180 are met. The original assignment and the certificate of deposit, if applicable, must be submitted to the board to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained at the underground storage tank site or the owner's or operator's place of work located in Virginia. The issuing institution shall be a bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and whose operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The owner or operator shall be entitled to demand, receive, and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of financial responsibility the owner or operator is required to demonstrate under 9VAC25-590-40.

C. In the event of failure of the owner or operator to comply with the requirements of 9VAC25-590-140, the board shall cash the certificate of deposit.

D. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall be approved by the board.

E. The wording of the assignment shall be identical to the wording specified in Appendix XIII.

9VAC25-590-170. Drawing on financial assurance mechanism.

A. Except as specified in subsection D of this section, the board may require the guarantor, surety, or institution issuing a letter of credit or certificate of deposit to pay to the board an amount up to the limit of funds provided by the financial assurance mechanism if:

1. ~~a.~~ The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or certificate of deposit; or

2. The conditions of subsection B of this section are satisfied.

B. The board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The board may use the financial responsibility funds obtained pursuant to subsection A of this section to conduct corrective action or to pay a third party claim when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI (9VAC25-580-230 et seq.); or

2. The board has received either:

a. Certification from the owner or operator and the third party liability claimant or claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification shall be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the board determines that the owner or operator has not satisfied the judgment.

C. If the board determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment of the financial responsibility funds for third party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (1997) (as incorporated by reference in 9VAC25-590-250), the local government guarantee without standby trust, shall make payments as directed by the board under the circumstances described in subsection A, B or C of this section.

9VAC25-590-190. Bankruptcy or other incapacity of owner, operator or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the board by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator and the board by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-590-70.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the board by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator and the board by certified mail of such commencement as required under the terms of the guarantee specified in 40 CFR 280.106 (1997) (as incorporated by reference in 9VAC25-590-250).

E. An owner or operator ~~who~~ that obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool plan, surety bond, ~~or~~ letter of credit, or certificate of deposit. The owner or operator shall obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.

F. Within 30 days after receipt of written notification that the Virginia Petroleum Storage Tank Fund has become incapable of covering assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance in accordance with 9VAC25-590-40.

9VAC25-590-200. Replenishment of guarantees, letters of credit, certificates of deposit, or surety bonds.

A. If at any time a letter of credit, certificate of deposit, surety bond, or guarantee is drawn upon by instruction of the board and the board has expended all or part of the funds for corrective action or to pay a third party liability claim(s), the owner or operator by the anniversary date of the financial assurance mechanism shall:

1. Replenish the value of the financial assurance mechanism to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which the face value of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator] hereby certifies that it is in compliance with the requirements of 9VAC25-590 (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9VAC25-590 is [are] as follows:

Indicate type of Mechanism (Note: the Fund may not be used as the sole mechanism):

____ Virginia Petroleum Storage Tank Fund ("the Fund")

____ Letter from Chief Financial Officer

____ Guarantee

____ Insurance Endorsement or Certificate

____ Letter of Credit

____ Certificate of Deposit

____ Surety Bond

____ Trust Fund

Name of Issuer (for mechanism other than the Fund): _____

Mechanism Number (if applicable):_____

Demonstration amount for mechanism other than the Fund:

$_____ corrective action per occurrence

$_____ third party liability per occurrence

$_____ annual aggregate

The Virginia Petroleum Storage Tank Fund demonstrates amounts for corrective action per occurrence, third party liability per occurrence, and annual aggregate, in excess of the amounts demonstrated by the "mechanism other than the Fund" up to one million dollars. In the event that the owner/operator owns/operates in excess of 100 USTs in the Commonwealth of Virginia, the Fund demonstrates up to an annual aggregate of two million dollars.

Mechanisms' effective period of coverage: _____ to _____

(If you are using either the Financial Test or the Guarantee, please indicate the current financial reporting year, e.g., 1/01/02—12/31/02, if you use the calendar year as your financial reporting year, or other dates if you operate under a different fiscal year. If you are using a Letter of Credit, a Certificate of Deposit, a Surety Bond, or an Insurance Policy, please indicate the annually renewable term of the applicable mechanism.)

Do(es) mechanism(s) cover(s): taking corrective action and/or compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases? ____ Yes ____ No

If "No," specify in the following space the items the mechanism covers:

[Signature of owner or operator]

[Name of owner or operator] [Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

APPENDIX XIII. ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and Address of Bank]

City _____, _____, 20__

FOR VALUE RECEIVED, the undersigned assigns all right, title, and interest to the State Water Control Board, Commonwealth of Virginia, and its successors and assigns the State Water Control Board the principal amount of the instrument, including all moneys deposited now or in the future to that instrument, indicated below:

If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the State Water Control Board in the amount of _____ Dollars [$ _____].

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the State Water Control Board.

Additional Security. This assignment shall secure the payment of any financial obligation of the [name of owner/operator] to the State Water Control Board for "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] corrective action per occurrence, [in words] $[insert dollar amount] third party liability per occurrence, and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70 ("Notification requirements" of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The certificate of deposit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-590-40 ("Amount and scope of financial responsibility requirement" of the Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial responsibility obligations of [name of owner/operator] to the State Water Control Board for "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the underground storage tank(s) at the [facility name and address]. The undersigned authorizes the State Water Control Board to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the State Water Control Board's discretion to fund "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the underground storage tank(s) at the [facility name] or in the event of [owner or operator's] failure to comply with the Petroleum Underground Storage Tank Financial Responsibility Requirements, 9VAC25-590. The undersigned agrees that the State Water Control Board may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. [The undersigned] agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

The party or parties to this Assignment also certify that the wording of this Assignment is identical to the wording specified in Appendix XIII of 9VAC25-590 as such regulations were constituted on the date this Assignment was executed.

SEAL

[Owner/Operator signature]

[print Owner or Operator's name] [Date]

SEAL

[Owner/Operator signature]

[print Owner or Operator's name] [Date]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of

$ _____ for the benefit of the State Water Control Board, Commonwealth of Virginia.

If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

[Signature] [Date]

[print name]

[Title]

Mailing address of branch or lending office

Area code and telephone number of branch or lending office

VA.R. Doc. No. R13-3471; Filed August 7, 2013, 8:27 a.m.

Fast-Track Regulation

Titles of Regulations: **9VAC25-600. Eastern Virginia Ground Water Management Area (amending 9VAC25-600-10, 9VAC25-600-20).**

9VAC25-620. Order Declaring the Eastern Shore of Virginia - Accomack and Northampton Counties - As a Critical Ground Water Area (repealing 9VAC25-620-10).

Statutory Authority: § 62.1-256 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: October 10, 2013.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TTY (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

Basis: Subdivision (10) of § 62.1-44.15 of the Code of Virginia provides the State Water Control Board the authority to adopt such regulations as are necessary to enforce the water management program in the Commonwealth. Section 62.1-256 of the Code of Virginia provides the board the specific powers to regulate pursuant to the Ground Water Management Act of 1992. The designation process of ground water management areas is outlined in 9VAC25-610-70, criteria for consideration of a ground water management area, and 9VAC25-610-80, declaration of ground water management areas.

Purpose: The amendments to the Eastern Virginia Ground Water Management Area Regulations consolidate all localities included in ground water management areas into one regulation and will protect the public health, safety, and welfare by making it easier for the public to find all of the designated ground water management areas in a single location. This action eliminates a regulation that is no longer needed and lists all localities included in ground water management areas in one regulation.

Rationale for Using Fast-Track Process: This regulatory amendment is expected to be noncontroversial since it does not change any regulatory requirements placed on localities, industry, or the public. This regulatory action consolidates the list of localities included in ground water management areas into one regulation.

Substance: The counties of Accomack and Northampton are being incorporated into 9VAC25-600 (Designated Ground Water Management Areas). Accomack and Northampton Counties are part of the Eastern Shore Ground Water Management Area. 9VAC25-620 (Order Declaring the Eastern Shore of Virginia - Accomack and Northampton Counties - as a Critical Ground Water Area) is being repealed. This action consolidates all localities included in ground water management areas into one regulation.

Issues: The primary advantage to the public and the Commonwealth to consolidating the list of localities into a single regulation is the removal of a separate regulation that is no longer needed. One regulation can now be consulted to determine if a locality is located within a ground water management area. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Income Analysis:

Summary of the Proposed Amendments to Regulation. Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to consolidate designated ground water management areas in Virginia under a single section of the regulations.

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

Estimated Economic Impact. The Board proposes to consolidate designated ground water management areas in Virginia under a single section of the regulations. In order to accomplish this goal, section 620 designating the Eastern Shore Groundwater Area is repealed and moved to section 600, which is now renamed to encompass all of the designated ground water areas in the Commonwealth. The proposed change will not create any significant economic impact as there is no change in any of the regulatory requirements, but is expected to make it easier to find all of

the designated ground water management areas under one section.

Businesses and Entities Affected. The proposed changes will make it easier for the public to find all of the designated ground water management areas in the regulations.

Localities Particularly Affected. The proposed regulations will not have any direct effect on localities.

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

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

Small Businesses: Costs and Other Effects. No costs or other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 State Water Control Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) add Accomack and Northampton Counties, the two localities previously listed in 9VAC25-620, to 9VAC25-600; (ii) change the title of 9VAC25-600, which lists all localities that are required to comply with the Ground Water Withdrawal Regulations (9VAC25-610), to reflect that there are multiple designated ground water management areas now included in it; and (iii) repeal 9VAC25-620.

CHAPTER 600

~~EASTERN VIRGINIA~~ DESIGNATED GROUND WATER MANAGEMENT ~~AREA~~ AREAS

9VAC25-600-10. Definitions.

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

"Act" means the ~~Groundwater~~ Ground water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia).

~~"Area" means the Eastern Virginia Groundwater Management Area.~~

"Board" means the State Water Control Board.

"Ground water management area" means a geographically defined ground water area in which the board has deemed the levels, supply or quality of ground water to be adverse to public welfare, health and safety.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

9VAC25-600-20. Declaration of ground water management ~~area~~ areas.

A. The board hereby orders the declaration of the eastern part of Virginia as a ground water management area. This area shall be known as the Eastern Virginia ~~Groundwater~~ Ground Water Management Area. This area encompasses the counties of Charles City, Isle of Wight, James City, King William, New Kent, Prince George, Southampton, Surry, Sussex, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

B. ~~The area encompasses the counties of Charles City, Isle of Wight, James City, King William, New Kent, Prince George, Southampton, Surry, Sussex, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.~~ The board hereby orders the declaration of the Eastern Shore of Virginia as a ground water management area. This area shall be known as the Eastern Shore Ground Water Management Area. The area encompasses the counties of Accomack and Northampton.

C. All aquifers located between the land surface and basement rock within the geographic area defined will be included in the area and will be subject to the corrective controls set forth in Act.

VA.R. Doc. No. R13-3601; Filed August 7, 2013, 8:29 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-10, 9VAC25-640-170, 9VAC25-640-180, 9VAC25-640-200, 9VAC25-640-210, Appendix IX; adding 9VAC25-640-115, Appendix X).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: October 10, 2013.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 62.1-44.34 of the Code of Virginia provides the legal basis for the regulations in 9VAC25-640 (Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements). Section 62.1-44.34:16 of the Code of Virginia authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines to demonstrate financial responsibility for any pipelines operated within the Commonwealth.

Purpose: The rationale for the addition of the certificate of deposit to 9VAC25-640 is to provide additional flexibility for the operators of ASTs and pipelines when meeting their financial responsibility requirements. This amendment will provide another mechanism for them to use. Currently, many operators who use letters of credit are required by the bank to collateralize the letter of credit with a certificate of deposit, and the bank charges a fee to establish the letter of credit and an annual maintenance fee to carry it. This can be burdensome to individuals and businesses having funds tied up as collateral and not available for business needs. Additionally, the value of the certificate of deposit will also increase over time providing more funds for business needs.

Rationale for Using Fast-Track Process: The proposed amendments are expected to be noncontroversial and therefore justify using the fast-track rulemaking process. The amendments to this regulation will allow operators to use certificates of deposits to meet their financial responsibility requirements under 9VAC25-640.

Substance: This regulatory action amends 9VAC25-640 (Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements) to add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for operators of aboveground storage tanks (ASTs) and pipelines.

9VAC25-640-115 and 9VAC25-640-250:10 (Appendix X) are added to this regulation to provide the requirements necessary for operators to use a CD for financial responsibility requirements. Other sections within the regulation were amended to add CDs to the list of mechanisms that may be used for financial responsibility.

Issues: The public will benefit, as these amendments will ensure that operators have more options for establishing their financial responsibility for taking corrective action and for compensating third parties for injury or property damage by accidental releases arising from the operation of ASTs and pipelines. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments to 9VAC25-640.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for operators of Aboveground Storage Tank (AST) and pipeline facilities. Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. State Water Control Law (Section 62.1-44.34:16 D) requires that operators of aboveground storage tank and pipeline facilities demonstrate financial responsibility (to pay for the cleanup of potential leaks) as a condition of operation. These regulations specify the financial responsibility requirements for AST and pipeline facilities. Under the current regulations, operators may use any one or combination of the following mechanisms to demonstrate financial responsibility: (1) financial test of self-insurance; (2) guarantee; (3) insurance; (4) surety bond; (5) letter of credit; or (6) trust fund. Further details are specified in the regulations. The Board proposes to add a CD to the list acceptable mechanisms.

Banks charge a fee to establish a letter of credit and an annual maintenance fee to carry it. Additionally, the Department of Environmental Quality (DEQ) has found that many operators of AST and pipeline facilities who use a letter of credit are required by the bank to collateralize the letter of credit with a CD. Thus, directly permitting a CD as an acceptable mechanism could save costs for operators who currently use a letter of credit.

According to DEQs 2012 survey of banks in Virginia that currently issue letters of credit to operators, the cost to set up and maintain a new CD will be either no cost or have a very low fee compared to the charge for setting up and maintaining

letters of credit. Operators who can afford to put up the full amount of cash required to fund their financial responsibility requirement may not have to pay any origination or annual fees to the bank and they would earn interest on the CD. Many banks currently charge application fees of 1.0% to 1.5% of the total letter of credit amount with a minimum fee of $450 to $500. Additionally, banks charge operators an annual fee of $450 to $500 on the anniversary date of the letter of credit. Letters of credit that are secured with real estate also have additional costs associated with the loan.

If facility operators switch from a letter of credit to a certificate of deposit mechanism, the total cost savings could be substantial. Since allowing the use of a CD to demonstrate financial responsibility potentially reduces costs for some operators with no apparent reduction in assurance of financial responsibility, the proposed amendment should produce a net benefit.

Businesses and Entities Affected. The proposed amendment potentially affects the 661 aboveground storage tank facilities and two pipeline facilities in the Commonwealth, as well as their banks.

Localities Particularly Affected. As there are aboveground storage tank and pipeline facilities throughout the Commonwealth, the proposed amendment does not particularly affect a few specific localities.

Projected Impact on Employment. The proposed amendment will not likely have a large impact on employment.

Effects on the Use and Value of Private Property. The proposed amendment will likely result in some operators of AST and pipeline facilities who currently use another mechanism to demonstrate financial responsibility to switch to using a CD. Those operators who currently use a letter of credit seem particularly likely to switch in that it will very likely lower their costs.

Small Businesses: Costs and Other Effects. The proposed amendment will likely reduce costs for small operators of AST and pipeline facilities who currently use a letter of credit to demonstrate financial responsibility.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 State Water Control Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments to 9VAC25-640 (Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements) (i) add a certificate of deposit (CD) as an acceptable mechanism to demonstrate financial responsibility for operators of aboveground storage tanks and pipelines and (ii) provide the requirements necessary for operators to use a CD for their financial responsibility requirements.

9VAC25-640-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and clean up which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Change in service" means change in operation, conditions of the stored product, specific gravity, corrosivity,

temperature or pressure that has occurred from the original that may affect the tank's suitability for service.

"Containment and clean up" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Department" or "DEQ" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Group self-insurance pool" or "pool" means a pool organized by two or more operators of facilities for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:16 of the Code of Virginia.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or clean up or to recover the costs of containment and clean up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Member" means an operator of an aboveground storage tank or pipeline who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel. For purposes of this chapter, the definition of operator is restricted to operators of facilities.

"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.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground storage tank through one of the mechanisms listed in 9VAC25-640-70 through 9VAC25-640-120, including a guarantor, insurer, group self-insurance pool, surety, certificate of deposit, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into groundwater, surface water, or upon lands, subsurface soils or storm drain systems.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of 9VAC25-91 has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid

and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored;

3. Septic tanks;

4. Pipeline facilities (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.);

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.); or

c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or wastewater collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" means 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.

9VAC25-640-115. Certificate of deposit.

A. An operator may satisfy the requirements of 9VAC25-640-50, wholly or in part, by assigning all rights, title, and interest of a certificate of deposit to the State Water Control Board, Commonwealth of Virginia. The operator shall maintain the certificate of deposit until the requirements of 9VAC25-640-190 are met. The original assignment and the certificate of deposit, if applicable, must be submitted to the board to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained at the aboveground storage tank site or the operator's place of work located in Virginia. The issuing institution shall be a bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and whose operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The operator shall be entitled to demand, receive, and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of financial responsibility the operator is required to demonstrate.

C. In the event of failure of the operator to comply with the requirements of 9VAC25-640-150, the board shall cash the certificate of deposit.

D. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall be approved by the board.

E. The wording of the assignment shall be identical to the wording specified in Appendix X.

9VAC25-640-170. Recordkeeping.

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank or pipeline, or both, until released from the requirements of this regulation under 9VAC25-640-190. An operator shall

maintain such evidence at the aboveground storage tank site or the operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain the original instrument worded as specified.

2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

4. a. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall maintain a new original certification at or before the time specified in 9VAC25-640-160 or whenever the financial assurance mechanisms used to demonstrate financial responsibility changes.

5. For submissions required under 9VAC25-640-160:

a. The operator must provide an insurance endorsement or certificate, or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit , provided the form of the insurance endorsement or certificate, or notice of extension is approved by the board;

b. The operator need not provide a new original guarantee, letter of credit, certificate of deposit, or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;

c. The operator must provide a new original mechanism as specified in subdivision 2 of this subsection;

d. The operator need not provide a new original certification of acknowledgment, provided the associated trust agreement has not changed;

e. The operator must provide a new original certification of financial responsibility.

9VAC25-640-180. Drawing on financial assurance mechanisms.

A. The board may require the guarantor, surety, or institution issuing a letter of credit or certificate of deposit to pay to the board an amount up to the limit of funds provided by the financial assurance mechanism if:

1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, certificate of deposit; and

b. The board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the board pursuant to 9VAC25-91 of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The board may use the financial responsibility funds obtained pursuant to subsection A of this section to conduct containment and cleanup when it makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9VAC25-91.

9VAC25-640-200. Bankruptcy or other incapacity of operator provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the board by certified mail of such commencement.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator and the board by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, certificate of deposit, or letter of credit. The operator shall obtain alternate financial assurance as specified in this chapter and submit to the board the appropriate original forms specified in 9VAC25-640-170 B within 30 days after receiving notice of such an event. If

the operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.

9VAC25-640-210. Replenishment of guarantees, letters of credit, certificates of deposit, or surety bonds.

A. If at any time a guarantee, letter of credit, certificate of deposit, or surety bond is drawn upon by instruction of the board and the board has expended all or part of the funds for containment and cleanup, the operator by the anniversary date of the financial mechanism from which the funds were drawn shall:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which the face value of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Operator hereby certifies that it is in compliance with the requirements of 9VAC25-640.

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9VAC25-640 is [are] as follows:

Indicate type of Mechanism:

____ Letter from Chief Financial Officer

____ Guarantee

____ Insurance Endorsement or Certificate

____ Letter of Credit

____ Certificate of Deposit

____ Surety Bond

____ Trust Fund

Name of Issuer: _____

Mechanism Number (if applicable): _____

Total number of gallons of aboveground storage capacity for which demonstration is provided: _____

Amount of coverage for mechanism:

$_____ containment and clean up per occurrence and annual aggregate

Effective period of coverage: _____ to _____

Do(es) mechanism(s) cover(s): containment and clean up caused by either sudden accidental discharges or nonsudden accidental discharges or accidental discharges? ____ Yes ____ No

If "No," specify in the following space the items the mechanism covers:

[Signature of operator]

[Name of operator]

[Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires: _____

APPENDIX X. ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

[Name and Address of Bank]

City _____, 20__

___ FOR VALUE RECEIVED, the undersigned assigns all right, title, and interest to the State Water Control Board, Commonwealth of Virginia, and its successors and assigns the State Water Control Board the principal amount of the instrument, including all moneys deposited now or in the future to that instrument, indicated below:

__If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the State Water Control Board in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the State Water Control Board.

Additional Security. This assignment shall secure the payment of any financial obligation of [name of operator] to the State Water Control Board to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If

more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The certificate of deposit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial responsibility obligations of [name of operator] to the State Water Control Board to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines at the [facility name and address]. The undersigned authorizes the State Water Control Board to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the State Water Control Board's discretion to fund containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines at the [facility name] or in the event of [operator's] failure to comply with the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements, 9VAC25-640. The undersigned agrees that the State Water Control Board may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. [The undersigned] agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

The party or parties to this Assignment also certify that the wording of this Assignment is identical to the wording specified in Appendix X of 9VAC25-640 as such regulations were constituted on the date this Assignment was executed.

SEAL

[Operator]

[print Operator's name] [Date]

SEAL

[Operator]

[print Operator's name] [Date]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of $ for the benefit of the State Water Control Board, Commonwealth of Virginia.

___ If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

[Signature] [Date]

[print name]

[Title]

Mailing address of branch or lending office

Area code and telephone number of branch or lending office

VA.R. Doc. No. R13-3465; Filed August 7, 2013, 8:31 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services 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 or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-5. Public Participation Guidelines (amending 12VAC30-5-50, 12VAC30-5-100).**

Statutory Authority: §§ 2.2-4007.02 and 32.1-324 of the Code of Virginia.

Effective Date: September 27, 2013.

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, TTY (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

Summary:

This regulatory action conforms the department's public participation guidelines with Chapter 795 of the 2012 Acts of Assembly by adding provisions that give interested persons the opportunity to be accompanied or represented by counsel or other representative (i) when submitting public comments about regulatory actions or (ii) at the agency's public hearings on regulations.

Part III

Public Participation Procedures

12VAC30-5-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

3. The agency shall afford all interested persons the opportunity to be accompanied by and represented by their own counsel or representative in such activities.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

12VAC30-5-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action. During such hearings, the agency shall afford all interested persons the opportunity to be accompanied by and represented by their own counsel or other representative.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

VA.R. Doc. No. R13-3780; Filed August 7, 2013, 11:50 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Housing and Community Development will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-495).**

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: September 26, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

Pursuant to Chapter 514 of the 2013 Acts of Assembly, the amendments specify (i) when an enterprise zone is redesignated as a joint enterprise zone after an additional locality has been added to the zone and (ii) the duration of the redesignated zone after redesignation. Prior to the enactment of the 2013 legislation, the enterprise zone statute was silent on the impact of redesignation on the duration of the affected enterprise zones.

13VAC5-112-495. Redesignation of certain joint enterprise zones.

A. Existing joint enterprise zones consisting of two localities may be redesignated for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities in which the proposed redesignated zone will be located have submitted resolutions to the department supporting the proposed redesignation and application for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

B. When a county or city was previously added to an existing enterprise zone to create a joint enterprise zone, the department shall redesignate the enterprise zone when the term of the joint enterprise zone expires. The duration of the enterprise zone redesignated pursuant to this subsection shall be equal to the length of time the original enterprise zone existed before the county or city was added to create the joint enterprise zone.

C. Any redesignation of an existing joint enterprise zone shall be in compliance with all applicable regulations of the Board of Housing and Community Development.

VA.R. Doc. No. R13-3822; Filed July 26, 2013, 1:00 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Proposed Regulation

Title of Regulation: **18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-52, 18VAC15-30-164, 18VAC15-30-166, 18VAC15-30-790, 18VAC15-30-810).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

September 24, 2013 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA

Public Comment Deadline: October 25, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides general authority to the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Section 54.1-501 of the Code of Virginia requires the board to promulgate regulations, including but not limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of lead program licenses.

Purpose: The board intends to amend its lead-based paint activities regulations to remove the requirement that the lead license expiration date corresponds with the lead training expiration date. The current result is that the expiration dates of lead licenses may vary from one license cycle to another causing confusion among the regulant population. Most licenses issued under the Department of Professional and Occupational Regulation (DPOR) have a license cycle of one or two years and the expiration date is the last day of the month in which the license was issued. Amending these regulations will allow the lead program license cycle to be consistent with other programs housed under DPOR, which will in turn lessen the confusion among the regulant population, resulting in a benefit to the public welfare.

Substance: A subsection is added to 18VAC15-30-52 and 18VAC15-30-790 to address the training requirement as a qualification for licensure. The amendments also modify the specific entry requirements for each discipline to refer to the newly created subsection.

18VAC15-30-164 is amended by removing the connection between the license expiration date and the training expiration date.

Amendments to 18VAC15-30-166 (i) emphasize the valid time period for training and explain that the training must be discipline specific, (ii) state the consequences of not completing training on time or not taking the proper training for the license discipline, and (iii) amend the requirement that accredited training providers certify their continued compliance with the Virginia regulations every 24 months instead of 48 months to make the regulation consistent with how often providers actually certify their continued compliance.

A subsection is added to 18VAC15-30-810 that states that a regulant failing to keep his license and training current is grounds for denial of an application, denial of renewal, or discipline.

Issues: The primary advantage to the public is that regulants should better understand that they must keep their training valid in addition to their license. Whereas the license proves minimum competency, the required training teaches the standards for conducting lead-based paint activities as described in 18VAC15-30 and the standards adopted by the U.S. Environmental Protection Agency. A properly trained regulant population would benefit the general public. No disadvantage has been identified.

The primary advantage to DPOR and the Commonwealth is an amended regulation that can be administered effectively and is anticipated to provide a reasonable level of public protection with a minimum intrusion into the conduct of commerce. No disadvantage has been identified.

The primary advantage to the regulated community and government officials is that training requirements are clarified. No disadvantage has been identified.

Summary:

The proposed amendments (i) clarify training requirements upon entry and renewal of an individual or training provider license, (ii) remove the requirement that the lead license expiration date corresponds with the lead training expiration date, and (iii) change the time frame that accredited lead training providers must certify continued compliance to 24 months.

18VAC15-30-52. Qualifications for licensure - individuals.

A. General. Applicants shall meet all applicable entry requirements at the time application is made.

B. Name. The applicant shall disclose his full legal name.

C. Age. The applicant shall be at least 18 years old.

D. Address. The applicant shall disclose a physical address. A post office box is only acceptable when a physical address is also provided.

E. Training. The applicant shall provide documentation of having satisfactorily completed the board-approved initial training program and all subsequent board-approved refresher training programs as specified in subsection F of this section. Board-approved initial training programs shall be valid for 36 months after the last day of the month wherein completed. Board-approved refresher training programs shall be satisfactorily completed no later than 36 months after the last day of the month wherein the board-approved initial training program was completed and once each 36 months thereafter.

~~E.~~ F. Specific entry requirements.

1. Worker. Each applicant for a lead abatement worker ~~licensure~~ license shall provide evidence of successful completion of ~~a~~ board-approved ~~initial~~ lead abatement worker ~~course~~ training in accordance with subsection E of this section.

2. Project designer.

a. Each applicant for a lead project designer ~~licensure~~ license shall provide evidence of successful completion of ~~a~~ board-approved ~~initial~~ lead project designer ~~course and successful completion of a board-approved initial lead abatement supervisor course and one of the following:~~ training and board-approved lead abatement supervisor training in accordance with subsection E of this section.

b. Each applicant for a lead project designer license shall also provide evidence of successful completion of one of the following:

~~a.~~ (1) A bachelor's degree in engineering, architecture, or a related profession, and one year experience in building construction and design or a related field; or

~~b.~~ (2) Four years of experience in building construction and design or a related field.

3. Supervisor.

a. Each applicant for a lead abatement supervisor ~~licensure~~ license shall provide evidence of:

(1) Successful completion of ~~a~~ board-approved ~~initial~~ lead abatement supervisor ~~course~~ training in accordance with subsection E of this section; and

(2) One year experience as a licensed lead abatement worker or two years experience in a related field (e.g., lead, asbestos or environmental remediation) or in the building trades.

b. Each applicant shall pass a board-approved licensing examination for supervisors within 36 months after completion of the board-approved lead abatement supervisor initial training course or the board-approved lead supervisor refresher course. Applicants who fail the examination three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

c. A licensed lead abatement supervisor may perform the duties of a licensed lead abatement worker.

4. Inspector.

a. Each applicant for a lead inspector ~~licensure~~ license shall provide evidence of successful completion of ~~a~~ board-approved ~~initial~~ lead inspector ~~course~~ training in accordance with subsection E of this section.

b. Each applicant shall pass a board-approved licensing examination for lead inspector within 36 months after completion of the board-approved lead inspector initial training course or the board-approved lead inspector refresher course. Applicants who fail the examination three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

5. Risk assessor.

a. Each applicant for a lead risk assessor ~~licensure~~ license shall provide evidence of successful completion of ~~a~~ board-approved ~~initial~~ lead risk assessor training ~~course~~ and successful completion of ~~a~~ board-approved ~~initial~~ lead inspector training ~~course that was at least three days in length and one of the following:~~ in accordance with subsection E of this section.

b. Each applicant for a lead risk assessor license shall also provide evidence of successful completion of one of the following:

(1) Certification or licensure as an industrial hygienist, a professional engineer, a registered architect or licensure in a related engineering/health/environmental field;

(2) A bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction);

(3) An associate's degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(4) A high school diploma or its equivalent, and at least three years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction).

~~b.~~ c. Each applicant shall pass a board-approved licensure examination for risk assessor within 36 months after completion of the board-approved lead risk assessor initial training course or the board-approved lead risk assessor refresher course. Applicants who fail the examination three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

~~F.~~ G. Training verification. Training requirements shall be verified by submittal to the board of the training certificate issued by the accredited lead training provider for that course.

~~G.~~ H. Education verification. Education requirements shall be verified by submittal to the board on the Education Verification Form sent directly from the school.

~~H.~~ I. Experience verification. Experience requirements shall be verified by resumes, letters of reference, or documentation of work experience.

~~I.~~ J. Conviction or guilt. The applicant shall disclose the following information:

1. A conviction in any jurisdiction of any felony.

2. A conviction in any jurisdiction of any misdemeanor.

3. Any disciplinary action taken in another jurisdiction in connection with the applicant's environmental remediation practice including, but not limited to, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.

4. Any current or previously held environmental remediation certifications, accreditations or licenses issued by Virginia or any other jurisdiction.

Subject to the provisions of § 54.1-204 of the Code of Virginia, the board may deny any application for licensure or accreditation as a lead training provider when any of the parties listed in this subsection have been convicted of any offense listed in this subsection or has been the subject of any disciplinary action listed in subdivision 3 of this subsection. Any plea of nolo contendere shall be considered a conviction

for the purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

~~J.~~ K. Standards of conduct and practice. Applicants shall be in compliance with the standards of conduct and practice set forth in Part VIII (18VAC15-30-510 et seq.) of this chapter at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

~~K.~~ L. Standing. The applicant shall be in good standing in every jurisdiction where licensed and the applicant shall not have had a license that was suspended, revoked or surrendered in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure or approval to any applicant based on disciplinary action by any jurisdiction.

Part V
Renewal

18VAC15-30-164. Renewal required.

A. Interim licenses shall expire six months from the last day of the month during which the individual completed the board-approved initial or refresher accredited lead training program required by 18VAC15-30-52 regardless of the date on which the board received the application for initial licensure or the date the board issued the license.

B. Interim licenses shall not be renewed or extended.

C. Individual licenses shall expire 12 months from the last day of the month wherein ~~the individual completed the initial training program or refresher training program required by 18VAC15-30-52 regardless of the date on which the board received the application for individual licensure or the date the board~~ issued ~~the license~~. ~~In no case shall an individual license expire later than the last day of the month which is 36 months after the date the individual completed the initial training program or most recent refresher training program.~~

D. Contractor licenses shall expire 12 months from the last day of the month wherein issued.

E. Accredited lead training programs approval shall expire 24 months from the last day of the month in which the board granted approval.

18VAC15-30-166. Qualifications for renewal.

A. Individuals.

1. Licensees desiring to maintain an individual license shall satisfactorily complete the required board-approved refresher training ~~program established by this chapter and assure that the board receives documentation of satisfactory completion no later than the last day of the month that is 36 months after the date of completion of the initial training program or refresher training program and not less often than once each~~ course within 36 months after the date that the initial or most recent refresher training course was completed and at least once every 36 months thereafter. In the case of a proficiency-based course completion, refresher training is required every 60 months instead of 36 months.

2. Licensees are responsible for ensuring that the board receives proof of completion of the required board-approved training. Prior to the expiration date shown on the individual's current license, the individual desiring to renew that license shall provide evidence of meeting the board-approved refresher training requirement for license renewal.

3. Refresher training shall be specific to the discipline of the license being renewed.

~~2.~~ 4. The board shall renew an individual license for an additional 12 months upon receipt of a renewal application and fee in compliance with 18VAC15-30-163 and 18VAC15-30-165, provided that the licensee has complied with ~~subdivision~~ subdivisions 1 through 3 of this subsection. ~~In no case shall an individual license expire later than the last day of the month that is 36 months, or in the case of proficiency based course 60 months, after the initial training program or most recent refresher training program was completed.~~

B. Contractors. The board shall renew a contractor license for an additional 12 months upon receipt of a renewal application and the renewal fee in compliance with 18VAC15-30-163 and 18VAC15-30-165. Return of the renewal application and renewal fee to the board shall constitute a certification that the licensee is in full compliance with the board's regulations.

C. Accredited training programs.

1. Accredited lead training providers desiring to maintain approval of their accredited lead training program shall cause the board to receive the following no later than ~~48~~ 24 months after the date of initial approval and not less often than once each ~~48~~ 24 months thereafter:

a. The training provider's name, address, and telephone number.

b. A statement signed by the training program manager that certifies that:

(1) The course materials for each course meet the requirements of Part VII (18VAC15-30-440 et seq.) of this chapter.

(2) The training manager and principal instructors meet the qualifications listed in 18VAC15-30-340.

(3) The training program manager complies at all times with all requirements of this chapter.

(4) The quality control program meets the requirements noted in 18VAC15-30-410.

(5) The recordkeeping requirements of this chapter will be followed.

2. Return of the renewal application and renewal fee to the board shall constitute a certification that the accredited lead training provider is in full compliance with the board's regulations.

3. An audit by a board representative may be performed to verify the certified statements and the contents of the application before relicensure is granted.

4. Accredited lead training programs determined by the board to have met the renewal requirements shall be issued an approval for an additional 24 months.

18VAC15-30-790. Professional responsibility.

A. The licensee or accredited lead training provider shall, upon request or demand, produce to the board, or any of its representatives, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board against a licensee or accredited lead training provider.

B. A licensee shall not use the design, plans, or work of another licensee with the same type of license without the original's knowledge and consent, and after consent, a thorough review to the extent that full responsibility shall be assumed by the user.

C. Accredited lead training providers shall admit board representatives for the purpose of conducting an on-site audit, or any other purpose necessary to evaluate compliance with this chapter and other applicable laws and regulations.

D. Each licensee shall keep his board-approved training and license current.

18VAC15-30-810. Grounds for denial of application, denial of renewal, or discipline.

A. The board shall have the authority to fine any licensee or accredited lead training provider, training manager or principal instructor, and to deny renewal, to suspend, to revoke or to deny application for any license or approval as an accredited lead training program, accredited lead training provider, training manager or principal instructor provided for under Chapter 5 of Title 54.1 of the Code of Virginia for:

1. Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia, or any of the provisions of this chapter.

2. Obtaining a license, approval as an accredited lead training program, approval as an accredited lead training provider or approval as a training manager or principal instructor through fraudulent means.

3. Altering, falsifying or issuing a fraudulent Virginia lead license or a training certificate issued by an accredited lead training provider.

4. Violating any provision of any federal or state regulation pertinent to lead-based paint activities.

5. Having been found guilty by the board, another regulatory authority, or by a court, of any misrepresentation in the course of performing his operating duties.

6. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any felony or of any misdemeanor involving lying, cheating, or stealing, or of any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or discipline.

7. Failing to notify the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of any misdemeanor involving lying, cheating, or stealing or of any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent threat of significant harm to human health or the environment.

8. Negligence, or a continued pattern of incompetence, in the practice of the discipline in which a lead license is held.

9. Failing or neglecting to send any information or documentation that was requested by the board or its representatives.

10. Refusing to allow state or federal representatives access to any area of an abatement site for the purpose of lawful compliance inspections.

11. Any unlawful act or violation of any provision of Chapter 5 of Title 54.1 of the Code of Virginia or of the regulations of the board by any lead abatement supervisor or lead abatement worker may be cause for disciplinary action against the lead abatement contractor for whom he works if it appears to the satisfaction of the board that the lead abatement contractor knew or should have known of the unlawful act or violation.

12. Failing to notify the board in writing within 30 days after any change in address or name.

13. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

14. Failing to keep board-approved training and license current.

B. Any individual or firm whose license, approval as an accredited lead training program, approval as an accredited lead training provider or approval as a training manager or principal instructor is revoked under this section shall not be eligible to reapply for a period of one year from the effective

date of the final order of revocation. The individual or firm shall meet all education, experience, and training requirements, complete the application, and submit the required fee for consideration as a new applicant.

C. The board shall conduct disciplinary procedures in accordance with §§ 2.2-4019 and 2.2-4021 of the Administrative Process Act.

VA.R. Doc. No. R11-2634; Filed July 29, 2013, 11:36 a.m.

Proposed Regulation

Title of Regulation: **18VAC15-50. Lead-Based Paint Renovation, Repair, and Painting Regulations (adding 18VAC15-50-10 through 18VAC15-50-410).**

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Hearing Information:

September 24, 2013 - 10:30 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA

Public Comment Deadline: October 25, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Subdivision 5 of § 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Chapter 819 of the 2009 Acts of Assembly amended §§ 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-512, 54.1-516, and 54.1-517 of the Code of Virginia to mandate the regulation of lead renovation, repair, and painting activities. Pursuant to Chapter 819, the board's authority to implement the regulation is mandatory.

Section 54.1-501 of the Code of Virginia states that the board shall promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the (i) approval of accredited renovation training programs, (ii) licensure of individuals and firms to engage in renovation, and (iii) establishment of standards for performing renovations consistent with the Residential Lead-based Paint Hazard Reduction Act and U.S. Environmental Protection Agency (EPA) regulations. Such regulations of the board shall be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule.

Purpose: The proposed regulation fulfills specific statutory requirements and allows the Department of Professional and Occupational Regulation to establish, monitor, and enforce a regulatory program that addresses lead-based paint hazards created by renovation, repair, and painting activities. Renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities increase the threat of lead-based paint exposure by dispersing lead particles in the air and over household items. Both adults and children can receive hazardous lead paint exposures by inhaling or ingesting lead-based paint dust. Studies have shown that lead poisoning can cause permanent damage to the brain and other organs. In children, lead poisoning can cause lower IQ levels and behavioral problems.

The goal of the proposed regulation is to ensure that individuals and businesses conducting lead-based paint renovation, repair, and painting activities are properly trained and licensed so as to enhance the department's ability to protect the health, safety, and welfare of Virginia citizens from the hazard of lead-based paint poisoning.

Substance: The proposed regulation is necessary to establish the Lead-based Paint Renovation, Repair and Painting (RRP) regulatory program pursuant to the Chapter 819 of the 2009 Acts of Assembly. The proposed regulation establishes procedures and requirements for the (i) training of individual workers, (ii) licensure of individuals and businesses, (iii) approval of accredited training providers, (iv) conduct and work practice standards for individuals and businesses, and (v) recordkeeping for individuals and businesses conducting lead-based paint renovation, repair, and painting activities.

Issues: Effective April 22, 2010, EPA began administering the RRP regulatory program in Virginia and other states that had not obtained authorization to administer the program. EPA's regulations at 40 CFR Part 745, Subpart Q allow states to seek authorization to administer the RRP regulatory program.

The primary advantages to the public and the Commonwealth of implementing the new regulation are the establishment of a regulatory program that sets the minimum competence for individuals and businesses conducting lead-based paint renovation, repair, and painting activities and an expected decline in the number of families exposed to lead from paint, dust, and soil. The expected reduction in exposure to lead-based paint hazards will benefit the quality of life for Virginia citizens, particularly young children, and the quality of the Commonwealth's environment.

An increase in the cost of lead-based paint renovation, repair, and painting projects can be reasonably anticipated because of costs associated with training, licensure, and work practice requirements. At first glance, the anticipated increase may appear to be a disadvantage to the public or the Commonwealth. However, the anticipated increased cost will be offset by the expected reduction in the number of families exposed to lead-based paint hazards and the consequent reduction in the number of children affected by lead poisoning. As a result, medical costs and stress on families are likely to be reduced.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The 2009 Acts of Assembly, Chapter 819 amended §§ 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-512, 54.1-516, and 54.1-517 of the Code of Virginia to mandate the regulation of lead renovation, repair, and painting activities.

The Board for Asbestos, Lead, and Home Inspectors (Board) proposes these new regulations to comply with the mandate. The proposed new regulations establish: 1) a regulatory program for the licensure of renovators, dust sampling technicians and renovation contractor firms; 2) requirements for the approval of accredited renovator and dust sampling technician training programs; and 3) standards of conduct and work practices that are consistent with the United States Environmental Protection Agency (EPA) Lead Renovation, Repair, and Painting Program Final Rule.

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

Estimated Economic Impact. The proposed regulation fulfills specific statutory requirements and allows the Department of Professional and Occupational Regulation (Department) to establish, monitor, and enforce a regulatory program that addresses lead-based paint hazards created by renovation, repair, and painting activities. Renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities increase the threat of lead-based paint exposure by dispersing lead particles in the air and over household items. Both adults and children can receive hazardous lead paint exposures by inhaling or ingesting lead-based paint dust.[1] Studies have shown that lead poisoning can cause permanent damage to the brain and other organs.[2] In children, lead poisoning can cause lower IQ levels and behavioral problems.[3] The goal of the proposed regulation is to ensure that individuals and businesses conducting lead-based paint renovation, repair and painting activities are properly trained and licensed so as to enhance the Department's ability to protect the health, safety, and welfare of Virginia citizens from the hazard of lead-based paint poisoning. As the referenced peer-reviewed studies indicate, exposure to lead-based paint can cause severe health problems. To the extent that the proposed regulations reduce the likelihood that residents of buildings with lead-based paint and renovation, repair and painting workers are exposed to and inhale or ingest lead-based paint, the proposed regulations will likely produce a significant benefit for the public.

Application and annual renewal fees for the new program are expected to be $45 for individuals and $60 for businesses. The cost of training courses is expected to be similar to that for other programs regulated by the Board, at an initial cost of $400 per day of training, and $50 for renewal. Training courses already approved by the EPA will not need to be audited by the Board, and so the initial licensing fee will be $25. Costs and fees may vary based on the actual number of regulants entering the program. From the public perspective, these costs will likely be offset by lower medical and educational costs for those children and adults who are not exposed to lead poisoning due to the likely positive impact of the proposed regulations.

Businesses and Entities Affected. The new regulations will apply to businesses and individuals practicing renovation or modification of any existing structure that results in the disturbance of painted surfaces and will apply to providers of training for such practice. Based on the best information available, the Department estimates that approximately 10,000 businesses and 10,000 individuals will be licensed under these regulations. Most would be small businesses.

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

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect total employment. The moderate increase in costs for renovation contractor firms may lead to some reduction in affiliated jobs. On the other hand, increased demand for training from firms that provide accredited renovation training should at least partially offset such potential moderate job loss.

Effects on the Use and Value of Private Property. The proposed regulations will increase costs for businesses practicing renovation or modification of any existing structure that results in the disturbance of painted surfaces. This may result in a moderate reduction in the value of such firms. On the other hand, firms that provide accredited renovation training will likely have more demand for their services, higher revenue, and increased firm value.

Small Businesses: Costs and Other Effects. The proposed regulations will moderately increase costs for small businesses practicing renovation or modification of any existing structure that results in the disturbance of painted surfaces.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no apparent alternative method that reduces the adverse impact to small businesses and still accomplishes the policy goal of reduced lead poisoning.

Real Estate Development Costs. The proposed regulations may moderately increase the cost of renovating or modifying existing structures.

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 14 (10). 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.

References:

Goldstein, G.W. Lead Poisoning and Brain Cell Function. *Environmental Health Perspectives.*

Vol. 89, pp. 91-94, 1990.

Needleman, H.L. Lead Poisoning. *Annual Review of Medicine,* Vol. 55, pp. 209-222, 2004.

Needleman, H.L. and Gatsonis, C.A. Low-Level Lead Exposure and the IQ of Children.

Journal of the American Medical Association. 1990;263(5):673-678.

Rodier, P.M. Developing Brain as a Target of Toxicity. *Environmental Health Perspectives*.

Vol. 103, pp. 73-76, 1995.

[1]Needleman (2004)

[2]Goldstein (1990), Needleman (2004) and Rodier (1995)

[3]Goldstein (1990), Needleman (2004), and Needleman and Gatsonis (1990)

Agency's Response to Economic Impact Analysis: The Board for Asbestos, Lead, and Home Inspectors concurs with the Department of Planning and Budget's analysis.

Summary:

The proposed regulation establishes (i) a regulatory program for the licensure of renovators, dust sampling technicians, and renovation contractor firms; (ii) requirements for the approval of accredited renovator and dust sampling technician training programs; and (iii) standards of conduct and work practices that are consistent with the federal Environmental Protection Agency's Lead Renovation, Repair, and Painting Program final rule.

CHAPTER 50
LEAD-BASED PAINT RENOVATION, REPAIR, AND PAINTING REGULATIONS

Part I
Definitions and General

18VAC15-50-10. Definitions.

A. Section 54.1-500 of the Code of Virginia provides definitions of the following terms and phrases used in this chapter:

Accredited renovation training program

Board

Dust clearance sampling

Dust sampling technician

Lead-based paint

Lead-based paint activity

Lead-contaminated dust

Lead inspection

Lead inspector

Lead risk assessment

Lead risk assessor

Person

Principal instructor

Renovation

Renovation contractor

Renovator

Training manager

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

"Applicant" means a person who has submitted a fully executed application, but has not been granted a license or approval as an accredited renovation training program, approval as an accredited renovation training provider, or approval as a training manager or principal instructor by the board.

"Application" means a board-prescribed form submitted with the appropriate fee and other required documentation including, but not limited to, references, employment verification, and verification of examination and licensure, certification, or registration.

"Child-occupied facility" means a building or portion of a building constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied

facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages, are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

"Cleaning verification card" means a card developed and distributed or otherwise approved by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Common area" means the portion of a building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry rooms, recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Component or building component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, (i) interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and (ii) exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

"Containment" means a process to protect workers, building occupants, and the environment by controlling exposures to the lead-contaminated dust and debris created during a renovation activity.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course test" means an evaluation of the overall effectiveness of the training that tests the trainee's knowledge and retention of the topics covered during the course.

"Department" means the Department of Professional and Occupational Regulation or any successor agency.

"Discipline" means one of the specific job categories established in this chapter for which individuals must receive training from accredited renovation training providers, as defined in this chapter, and become licensed by the board. For an example, "renovator" is a discipline.

"Dry disposable cleaning cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

"Emergency renovation" means renovation, remodeling, or repainting activities that were not planned, but resulted from a sudden, unexpected event that if not immediately attended to presents a safety or public health hazard or threatens equipment or property with significant damage.

"EPA" means the U.S. Environmental Protection Agency.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"High-efficiency particulate air vacuum" or "HEPA vacuum" means a vacuum cleaner that has been designed with a HEPA filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner shall be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

"HUD" means the U.S. Department of Housing and Urban Development.

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Late renewal" means a period of time during which a regulant may renew a license or accredited renovation training program approval after its expiration date by paying an established fee without having to meet additional requirements.

"Licensee" means any person, as defined by § 54.1-500 of the Code of Virginia, who has been issued and holds a currently valid license as a dust sampling technician, renovator, or renovation contractor.

"Minor repair and maintenance activities" means activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by this chapter are used and where the work does not involve window replacement or demolition of painted surface areas.

When removing painted components or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days shall be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"OSHA" means the U.S. Department of Labor, Occupational Safety and Health Administration.

"Recognized test kit" means a commercially available kit recognized by EPA as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% lead by weight in a paint chip, paint powder, or painted surface.

"Regulant" means a licensee, training program, or training provider.

"Renewal" means the process and requirements for periodically approving a regulant to continue practicing.

"Substantially equivalent" means requirements that do not conflict with and are at least as rigorous as this chapter and supporting statutes of the board.

"Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

"Training hour" means at least 50 minutes of actual instruction, including but not limited to time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"Wet disposable cleaning cloth" means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

"Wet mopping system" means a device with the following characteristics: a long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Work area" means the area that the licensed renovator establishes to contain the dust and debris generated by a renovation.

18VAC15-50-20. Licensure and training program approval requirements.

A. A license issued by the board is required of any person who engages in renovation or dust sampling activities as defined in § 54.1-500 of the Code of Virginia.

B. Any person who holds a valid EPA renovation firm, renovator, or dust sampling technician certification on or before (insert the effective date of this chapter), may continue to lawfully practice in Virginia until (insert date that is 12 months after effective date of this chapter). Effective (insert date that is 12 months plus one day after effective date of this chapter), to continue to lawfully practice in Virginia, a valid Virginia renovation contractor, renovator, or dust sampling technician license, as appropriate, shall be required.

C. Training courses intended to satisfy the training requirements of this chapter shall be approved by the board.

D. Any person who holds a valid EPA renovator or dust sampling technician training program accreditation on or before (insert the effective date of this chapter), may continue to provide accredited training in Virginia until (insert date which is 12 months after effective date of this chapter). Effective (insert date that is 12 months plus one day after effective date of this chapter), to continue to provide accredited training in Virginia, a valid Virginia training program accreditation shall be required.

E. Application shall be made in compliance with 18VAC15-50-60, 18VAC15-50-70, or 18VAC15-50-80, as appropriate.

18VAC15-50-30. Exemptions from licensure requirement.

This chapter shall not apply to the following:

1. A person performing a minor repair and maintenance activity as defined in 18VAC15-50-10.

2. A person performing a renovation activity and the paint involved in the renovation activity has been tested by a licensed lead inspector or licensed lead risk assessor who has determined that the paint does not meet the definition of lead-based paint as defined in § 54.1-500 of the Code of Virginia. The renovation contractor shall obtain and maintain a copy of the written inspection or risk assessment report.

3. A person performing a renovation activity and the paint involved in the renovation activity has been tested by a licensed renovator who, using an EPA-recognized test kit as defined in 18VAC15-50-10 and following the kit's manufacturer's instructions, has determined that the paint does not meet the definition of lead-based paint as defined in § 54.1-500 of the Code of Virginia.

18VAC15-50-40. Issuance of temporary licenses not applicable.

The board shall not issue temporary licenses pursuant to § 54.1-201.1 of the Code of Virginia.

Part II
Entry

18VAC15-50-50. Application procedures.

A. Each applicant seeking licensure or accredited renovation training program approval shall submit an application with the appropriate fee specified in 18VAC15-50-100. Application shall be made on forms provided by the board.

B. By signing the application or submitting it electronically to the department, the applicant certifies that he has read and understands the board's statutes and regulations.

C. The receipt of an application and the deposit of fees by the board do not indicate approval by the board.

D. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied.

E. Each applicant will be notified if his application is incomplete. An applicant who fails to complete the process within 12 months of the date of the department's receipt of the original application shall submit a new application and the appropriate fee.

18VAC15-50-60. Qualifications for licensure - individuals.

A. General. Each applicant shall meet entry requirements in effect at the time that the application is received by the department.

B. Name. The applicant shall disclose his full legal name.

C. Age. The applicant shall be at least 18 years old.

D. Address. The applicant shall disclose a physical address. A post office box is only acceptable when a physical address is also provided.

E. Specific entry requirements.

1. Renovator.

a. An individual applying for a renovator license shall have successfully completed a board-approved or EPA-approved renovator initial training course. If the initial training course was completed more than 60 months prior to the application, the applicant shall have successfully completed an accredited refresher course at least once every 60 months after the date of completion of initial training; or

b. An individual who has successfully completed a board-approved or EPA-approved lead worker or supervisor course within the 36 months immediately preceding application or an individual who has successfully completed HUD, EPA, or the joint EPA/HUD model renovation training course may take a board-approved or EPA-approved renovator refresher training course in lieu of the renovator initial training course.

2. Dust sampling technician.

a. An individual applying for an initial dust sampling technician license shall have successfully completed a board-approved or EPA-approved dust sampling technician initial training course. If the initial training course was completed more than 60 months prior to the application, the applicant shall have successfully completed an accredited dust sampling technician refresher course at least once every 60 months after the date of completion of initial training; or

b. An individual who successfully completed a board-approved or EPA-approved lead-based paint inspector or risk assessor course within the 36 months immediately preceding application, but is not licensed in the discipline by the board, may take a board-approved or EPA-approved dust sampling technician refresher training course in lieu of the dust sampling technician initial training course.

F. Training verification. The applicant shall include with the application:

1. Renovator.

a. A copy of the certificate of completion from the board-approved or EPA-approved renovator initial training course, and if the initial training was completed more than 60 months prior to the application, a copy of the certificate of completion from the most recent renovator refresher training course; or

b. A copy of the certificate of completion from the board-approved or EPA-approved renovator refresher training course and a copy of the certificate of completion from either an accredited lead worker or lead supervisor training course or HUD, EPA, or the joint EPA/HUD model renovation training course completed within the 36 months immediately preceding application.

2. Dust sampling technician.

a. A copy of the certificate of completion from the board-approved or EPA-approved dust sampling technician initial course, and if the initial training was completed more than 60 months prior to the application, a copy of the certificate of completion from the most recent dust sampling technician refresher training course; or

b. A copy of the certificate of completion from the board-approved or EPA-approved dust sampling technician refresher training course and a copy of the certificate of completion from a board-approved or EPA-approved lead-based paint inspector or risk assessor training course completed within the 36 months immediately preceding application.

G. Convictions. Each applicant shall disclose all convictions, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this subsection. The record of a 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. The board will consider any conviction in accordance with § 54.1-204 of the Code of Virginia.

H. Disciplinary action. Applicants shall disclose any disciplinary action taken in any jurisdiction in connection with the applicant's environmental remediation practice, including but not limited to monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.

I. Standards of practice and conduct. Applicants shall be in compliance with the standards of practice and conduct established in this chapter, as applicable, at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

J. Standing. The applicant shall be in good standing in every jurisdiction where licensed and the applicant shall not have had a license that was suspended, revoked, or surrendered in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure or accreditation to any applicant based on disciplinary action by any jurisdiction.

K. Applicants who disclose items specified in subsections H through J of this section may be granted a license following consideration by the board, in accordance with provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC15-50-70. Qualifications for licensure - renovation contractor firms.

A. General. Each firm shall secure a license before transacting business in Virginia. Each applicant shall meet entry requirements in effect at the time that the application is received by the department.

B. Name. The firm's name 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. Each firm shall register its trade or fictitious name with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia before submitting its application to the board.

C. Address. The applicant shall disclose a physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. Form of organization. Applicants shall meet the additional requirements prescribed in this subsection for their business type:

1. Corporations. All applicants shall have been incorporated in the Commonwealth of Virginia, or if a foreign corporation, shall have obtained a certificate of authority to conduct business in Virginia from the State Corporation Commission in accordance with § 13.1-544.2 of the Code of Virginia. The corporation shall be in good standing with the State Corporation Commission at the time of application to the board and at all times when the license is in effect.

2. Limited liability companies. All applicants shall have obtained a certificate of organization in the Commonwealth of Virginia, or if a foreign limited liability company, shall have obtained a certificate of registration to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia. The company shall be in good standing with the State Corporation Commission at the time of application to the board and at all times when the license is in effect.

3. Partnerships. All applicants shall have a written partnership agreement. The partnership agreement shall state that all professional services of the partnership shall be under the direction and control of a licensed or certified professional.

4. Sole proprietorships. Sole proprietorships desiring to use an assumed or fictitious name, that is a name other than the individual's full name, shall have their assumed or fictitious name recorded by the clerk of the court of the jurisdiction wherein the business is to be conducted, in accordance with Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

E. Qualifications. Each applicant for renovation contractor licensure shall certify that:

1. All individuals performing renovation activities on behalf of the firm are licensed renovators or have been trained by a licensed renovator as required under this chapter.

2. A licensed renovator shall be physically present at each work site while warning signs are being posted, work area containment is being established, and work area cleaning is being performed. When not on site during renovation activities, the licensed renovator shall be readily available by telephone and able to be present at the work site in no more than two hours.

3. The work practice standards for renovation activities established in this chapter and standards established by EPA and OSHA shall be followed at all times during the performance of renovation activities.

4. Prerenovation education requirements established in this chapter and standards established by EPA shall be followed at all times.

5. The recordkeeping requirements established in this chapter and standards established by EPA shall be followed at all times.

6. The firm is in compliance with all other occupational and professional licenses and standards as required by Virginia statute and local ordinance to transact the business of a renovation contractor.

F. Conviction or guilt. Neither the firm nor its owners, officers, or directors shall have been convicted or found guilty, regardless of adjudication, in any jurisdiction of any felony or misdemeanor involving lying, cheating, or stealing or of any violation while engaged in an environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom or the time for appeal having elapsed. Any

plea of nolo contendere shall be considered a conviction for the purposes of this section. A certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline. The board will consider any conviction in accordance with § 54.1-204 of the Code of Virginia.

G. Standards of practice and conduct. Each applicant shall be in compliance with the standards of practice and conduct established by this chapter, EPA, and OSHA at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

H. Standing. Both the firm and the owners, officers, and directors shall be in good standing in every jurisdiction where licensed, and the applicant shall not have had a license or certification that was suspended, revoked, or surrendered in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia. The board may deny licensure or certification to any applicant based on disciplinary action by any jurisdiction.

I. Denial of license. The board may refuse to issue a license to any renovation contractor applicant if the applicant or its owners, officers, or directors have a financial interest in a renovation contractor whose lead license has been revoked, suspended, or denied renewal in any jurisdiction.

18VAC15-50-80. Qualifications for accredited renovation training program approval.

A. For a training program to obtain accreditation from the board to teach lead-based paint renovation, repair, and painting activities courses, the program shall demonstrate through its application material that it meets the minimum requirements for principal instructor qualifications, required topic review, length of training, and recordkeeping for each discipline for which the program is seeking accreditation. Training programs shall offer courses that teach the standards for performing lead-based paint renovation, repair, and painting activities contained in this chapter and other such standards adopted by EPA.

B. Each applicant for approval as an accredited renovation training provider shall meet the requirements established by this chapter before being granted approval to offer an accredited renovation training program. Applicants requesting approval of a dust sampling technician or renovator training program to prepare participants for initial and continued licensure shall apply on a form provided by the board. The application form shall be completed in accordance with the instructions supplied and shall include the following:

1. The training provider's business name, physical address, mailing address, and telephone number.

2. The course and type, initial or refresher, for which accreditation is sought. For purposes of this chapter, courses taught in different languages are considered different courses, and each shall independently meet the accreditation requirements of this chapter. A signed statement from a qualified, independent translator that certifies he compared the course to the English language version and found the translation to be accurate shall accompany the application form.

3. A statement signed by the training program manager that certifies the training program meets the minimum requirements established in this chapter.

4. A narrative that states how the training course meets the minimum requirements for accreditation in the following areas:

a. Length of training in hours;

b. Examination content, length, format, and passing score;

c. Topics covered in the training course; and

d. Examination administration and integrity.

5. The names and qualifications, including resumes, education, training, experience, and relevant certifications of each instructor.

6. A copy of all training course materials, including but not limited to student manuals, instructor manuals, training aids, and handouts.

7. A copy of the course agenda that includes the time allotted for each course topic.

8. A copy of the course test and corresponding answer sheet.

9. A description of the facilities and equipment to be used for lecture and hands-on training.

10. A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for the course.

11. An example of a certificate that will be issued to students who successfully complete the course. The certificate shall contain the information listed in 18VAC15-50-270.

12. A proposed course date for auditing purposes.

13. The application fee required by 18VAC15-50-100.

C. The completed application form with attachments and fee shall be received by the board no later than 45 days before the desired audit date.

D. All training courses shall be discipline specific. An applicant may apply for accreditation to offer initial and refresher courses in any of the license disciplines defined in this chapter. A separate application and fee shall be made for each course.

E. Each training program shall be conducted in compliance with this chapter to qualify for and maintain approval as an accredited dust sampling technician or renovator training program.

F. Online training courses shall be accepted by the board for approval. The initial renovator and dust sampling technician training courses require a minimum of two hours of hands-on training activities. Training providers requesting approval for online initial training courses shall meet the hands-on training requirement.

G. An accredited training provider shall have been approved by the board or EPA before its training certificates shall be accepted by the board as evidence that an individual has completed an accredited dust sampling technician or renovator training program.

H. After the application has been found to be complete and in compliance with this chapter, an onsite audit of the training program shall be conducted.

1. If the onsite audit of the training program reveals a deficiency in compliance with this chapter, then the board shall conduct an additional onsite audit and grant approval or deny approval.

2. EPA-accredited courses approved on or before (insert effective date of this chapter), are exempt from the audit requirement.

Part III

Fees

18VAC15-50-90. 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.

18VAC15-50-100. Application fees.

A. Application fees are as follows:

Fee Type	Fee Amount
License:	
Dust sampling technician	$45
Renovator	$45
Renovation contractor firm	$60
Initial training program approval:	
Accredited dust sampling technician	$400
Accredited renovator	$400
Refresher training program approval:	
Accredited dust sampling technician	$200
Accredited renovator	$200
Training programs approved by EPA before (insert effective date of this chapter)	$25

B. Fees are due with the application.

18VAC15-50-110. Renewal fees.

A. Renewal fees are as follows:

Fee Type	Fee Amount
License:	
Dust sampling technician	$45
Renovator	$45
Renovation contractor firm	$60
Initial training program approval:	
Accredited dust sampling technician	$50
Accredited renovator	$50
Refresher training program approval:	
Accredited dust sampling technician	$50
Accredited renovator	$50
Late renewal - license	
Dust sampling technician	$70*
Renovator	$70*
Renovation contractor firm	$85*
Late renewal - initial training program approval	
Accredited dust sampling technician	$75*
Accredited renovator	$75*
Late renewal - refresher training program approval	
Accredited dust sampling technician	$75*
Accredited renovator	$75*
*includes a $25 late penalty fee in addition to the renewal fee	

B. Fees are due with the renewal application.

Part IV

Renewal

18VAC15-50-120. Renewal required.

A. Individual dust sampling technician and renovator licenses shall expire 12 months from the last day of the month in which the license was issued.

B. Renovation contractor licenses shall expire 12 months from the last day of the month in which the license was issued.

C. Accredited renovation training program approvals shall expire 24 months from the last day of the month in which the board granted approval.

D. A fee shall be required for renewal as specified in 18VAC15-50-110.

18VAC15-50-130. Procedures for renewal.

A. The department shall mail a renewal notice to the licensee or accredited renovation training provider at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee or accredited training provider of the obligation to renew in a timely fashion.

B. Prior to the expiration date shown on the license, the renovator or dust sampling technician desiring to renew the license shall return to the board the renewal notice, renewal fee, and as appropriate, a copy of the most recent refresher training certificate.

C. Prior to the expiration date shown on the license, the renovation contractor desiring to renew the license shall return to the board the renewal notice and the renewal fee.

D. Prior to the expiration date shown on the approval letter, the accredited renovation training program desiring to renew the approval shall return to the board the renewal notice and the renewal fee. Documentation that the requirements in 18VAC15-50-140 have been met shall accompany the renewal notice and fee.

E. Should the licensee or accredited renovation training program fail to receive the renewal notice, a copy of the current license or accredited renovation training program approval letter may be substituted for the renewal notice.

F. By renewing the license, the licensee is certifying his continued compliance with the general standards of practice and conduct in Part V (18VAC15-50-150 et seq.) of this chapter.

G. Each license or accredited training program approval that is not renewed within 30 days after the expiration date on the license or accredited renovation training program approval letter shall be subject to the late renewal fee as established in 18VAC15-50-110.

H. Each license or accredited training program approval that is not renewed within six months after the expiration date on the license or accredited renovation training program approval letter shall not be renewed. The licensee or approved accredited renovation training program shall apply as a new applicant and meet all entry requirements as established by this chapter.

18VAC15-50-140. Qualifications for renewal.

A. Individuals.

1. Licensees desiring to maintain an individual dust sampling technician or renovator license shall satisfactorily complete the refresher training program established by this chapter no later than the last day of the month that is 60 months after the date of completion of the initial training program or the most recent refresher training program.

2. Satisfactory completion of initial or refresher training shall be documented by a copy of a certificate of completion from a board-approved or EPA-approved training program.

3. Refresher training shall be specific to the discipline of the license being renewed.

4. The board shall renew an individual dust sampling technician or renovator license for an additional 12 months upon receipt of:

a. A renewal application in accordance with 18VAC15-50-130;

b. A fee in accordance with 18VAC15-50-110; and

c. As appropriate, a copy of a training certificate documenting compliance with subdivision 1 of this subsection.

5. Submission of the renewal application and renewal fee to the board shall constitute a certification that the licensee is in full compliance with the board's regulations.

B. Renovation contractor. The board shall renew a renovation contractor license for an additional 12 months upon receipt of a renewal application and the renewal fee, pursuant to 18VAC15-50-130 and 18VAC15-50-110. Submission of the renewal application and renewal fee to the board shall constitute a certification that the licensee is in full compliance with the board's regulations.

C. Accredited renovation training programs.

1. Accredited renovation training providers desiring to maintain approval of the accredited renovation training program shall submit the following no later than 24 months after the date of initial approval and not less than once every 24 months thereafter:

a. The training provider's business name, physical address, mailing address, and telephone number.

b. A statement signed by the training program manager that certifies:

(1) The course materials for each course meet the requirements of Part VII (18VAC15-50-300 et seq.) of this chapter;

(2) The training manager and principle instructors meet the qualifications listed in 18VAC15-50-210;

(3) The training manager complies at all times with all requirements of this chapter;

(4) The quality control plan meets the requirements noted in 18VAC15-50-280; and

(5) The recordkeeping requirements established by this chapter will be followed.

2. Submission of the renewal application and renewal fee to the board shall constitute a certification that the accredited renovation training provider is in full compliance with the board's regulations.

3. An audit by a board representative may be performed to verify the certified statements and the contents of the application before reaccreditation is granted.

4. Accredited renovation training programs determined by the board to have met the renewal requirements shall be issued an approval for an additional 24 months.

Part V
General Standards of Practice and Conduct

18VAC15-50-150. Grounds for denial of application, denial of renewal, or disciplinary action.

A. The board shall have the authority to (i) fine any licensee or accredited renovation training provider, training manager, or principal instructor; (ii) deny renewal; and (iii) suspend, revoke, or deny application for any license or approval as an accredited renovation training program, accredited renovation training provider, training manager, or principal instructor provided for under Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia for:

1. Violating or inducing another person to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 of Title 54.1 of the Code of Virginia, or any of the provisions of this chapter.

2. Obtaining a license, approval as an accredited renovation training program, approval as an accredited renovation training provider, or approval as a training manager or principal instructor through fraudulent means.

3. Altering, falsifying, or issuing a fraudulent Virginia individual dust sampling technician or renovator license or training certificate.

4. Violating any provision of any federal, state, or local law or regulation pertaining to renovation activities.

5. Having been found guilty by the board, another regulatory authority, or a court of any misrepresentation in the course of performing his renovator, dust sampling technician, renovation contractor, or training provider duties related to his license or approval.

6. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any felony or of any misdemeanor involving lying, cheating, or stealing or of any violation while engaged in an environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline.

7. Failing to notify the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of any misdemeanor involving lying, cheating, or stealing or of any violation while engaged in an environmental remediation activity that resulted in the significant harm or the imminent threat of significant harm to human health or the environment.

8. Negligence or a continued pattern of incompetence in the practice of the discipline in which the license is held.

9. Failing or neglecting to send any information or documentation that was requested by the board or its representative.

10. Failing to notify the board in writing within 30 days after any change in address or name.

11. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

12. Refusing to allow state or federal representatives access to any area of a renovation, repair, and painting site for the purpose of lawful compliance inspections.

13. Any unlawful act or violation of any provision of Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or of the regulations of the board by any renovator may be cause for disciplinary action against the renovation contractor for whom the renovator works, either as an employee or subcontractor, if it appears to the satisfaction of the board that the renovation contractor knew or should have known of the unlawful act or violation.

B. Any person whose license, approval as an accredited renovation training program, approval as an accredited renovation training provider, or approval as a training manager or principal instructor is revoked or withdrawn under this section shall not be eligible to reapply for a period of one year from the effective date of the final order of revocation or withdrawal of approval. The person shall meet all education, experience, training, and documentation requirements, complete the application, and submit the required fee for consideration as a new applicant.

C. The board shall conduct disciplinary procedures in accordance with §§ 2.2-4019 and 2.2-4021 of the Code of Virginia.

18VAC15-50-160. Maintenance of license.

A. Each regulant shall report all changes of address to the board in writing within 30 calendar days of the change and shall return the license or accredited renovation training course approval to the board. A physical address is required for each license. A post office box is acceptable only when a physical address is also provided. If the regulant holds more than one license, the regulant shall inform the board of all licenses affected by the address change.

B. Each regulant shall operate under the name in which the license is issued. Regulants shall report any change of individual or business name to the board in writing within 30 calendar days of the name change and shall return the license or accredited renovation training course approval to the board. If the regulant holds more than one license, the regulant shall inform the board of all licenses affected by the name change.

C. No license or accredited renovation training course approval issued by the board shall be assigned or otherwise transferred. Any attempt to assign or otherwise transfer a license shall make the license void.

D. Each regulant shall notify the board of changes in the firm within 30 days of the change. Such changes include, but are not limited to, the:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor or the death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; or

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

E. Each regulant shall keep his board-approved training and license current.

18VAC15-50-170. Recordkeeping and reporting requirements for renovation contractors.

All licensed renovation contractors shall comply with the information distribution, records retention, and reporting requirements related to renovation activities, in accordance with 40 CFR Part 745.

18VAC15-50-180. Notice of adverse action.

A. Regulants shall notify the board of the following actions:

1. Any disciplinary action taken by another jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, revocation, suspension, or denial, monetary penalty, or requirement for remedial education or other corrective action taken on any accredited renovation training course approval, license, certification, registration, or authorization of the regulant.

2. Any voluntary surrendering of a license, certificate, registration, authorization, or accredited renovation training course approval done in connection with an open disciplinary action in another jurisdiction.

3. Any conviction or finding of guilt, regardless of adjudication or deferred adjudication, of any felony or misdemeanor. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. All notices shall be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation shall accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC15-50-190. Response to inquiry and provision of records.

A. A regulant shall promptly respond to the board or any of its agents regarding a complaint.

B. The regulant shall promptly produce to the board or any of its agents any document, book, or record, or copy thereof, in which the regulant was involved, or that is in the regulant's possession or control concerning a transaction covered by this chapter, or for which the regulant is required to maintain records.

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.

Part VI
Standards of Practice and Conduct for Accredited Renovation Training Programs

18VAC15-50-200. Changes to an accredited renovation training program or provider.

A. Substantial changes made in any of the course items, after the course has been approved, shall be submitted to the board for review and approval prior to the continuation of the training course. The items include, but are not limited to:

1. Course curriculum.

2. Course examination.

3. Course materials.

4. Training manager and principal instructor or instructors.

5. Certificate of completion.

B. When an accredited renovation training provider offering an accredited renovation training program has a change of ownership, the new owner shall make written notification to the board within 30 days of the change of ownership. The new owner shall apply anew.

C. The accredited renovation training provider shall notify the board 30 days prior to relocating its business or transferring the records.

18VAC15-50-210. Qualifications of the training manager and principal instructor.

A. The training program shall employ a training manager who:

1. Has at least two years of experience, education, or training in teaching workers or adults; has a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration, or program management or a related field; or has two years of experience in managing a training program specializing in environmental hazards.

2. Has demonstrated experience, education, or training in the construction industry, including lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

B. The training program shall employ a qualified principal instructor, designated by the training manager, for each course who:

1. Has demonstrated experience, education, or training in teaching workers and adults.

2. Has successfully completed at least 16 hours of any EPA-accredited or board-approved lead-specific training for instructors of lead-based paint activities courses or eight hours of any EPA-accredited or board-approved lead-specific training for instructors of renovator or dust sampling technician courses.

3. Has demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

C. Documentation of all principal instructor qualifications shall be reviewed and approved by the board prior to the principal instructor teaching in an accredited renovation program.

18VAC15-50-220. Responsibilities of the training manager.

A. The training manager shall be responsible for ensuring that the training program complies at all times with the requirements of this section. The training manager is also responsible for:

1. Maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics.

2. Maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

B. The training manager shall designate a principal instructor for each course offered. The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material.

C. The training manager may designate guest instructors, as needed, to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

D. Any training manager who intends to also serve as a principle instructor shall meet the requirements of subsection B of 18VAC15-50-210 and, prior to instructing, provide documentation to the board.

18VAC15-50-230. Training manager and principal instructor documentation.

The following documents shall be recognized by the board as proof that the training managers and principal instructors meet the relevant education, work experience, and training requirements specifically listed in 18VAC15-50-210:

1. Official academic transcripts or diploma, as proof of meeting the education requirements.

2. Resumes, letters of reference, or documentation of work experience, as proof of meeting the experience requirements.

3. Certificates from train-the-trainer courses and lead-specific training courses, as proof of meeting the training requirements.

18 VAC 15-50-240. Training facilities.

The training program shall provide adequate facilities for the delivery of the lecture, course test, hands-on training, and assessment activities. The training program shall provide training equipment that reflects current work practices and maintaining or updating the equipment or facilities, as needed.

18VAC15-50-250. Length of training courses.

A. Training courses shall meet the following training hour requirements:

1. The dust sampling technician initial training course shall last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities shall cover dust sampling methodologies.

2. The renovator initial training course shall last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities shall cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

3. Refresher training courses shall last a minimum of four hours.

B. In no case shall actual training exceed eight hours during a 24-hour period.

18VAC15-50-260. Course examination.

A. Upon completion of each initial training course, the accredited renovation training program shall conduct a monitored, written course test and a hands-on skills assessment or, as an alternative, a proficiency test. To pass the course, each individual shall (i) successfully complete the hands-on skills assessment and receive a passing score on the course test or (ii) successfully complete a proficiency test. Refresher training programs are not required to conduct a hands-on skills assessment.

B. The course test, an evaluation of the overall effectiveness of the training, shall test the trainees' knowledge and retention of the course topics covered.

C. The passing score on the course test shall be 70%.

D. The hands-on skills assessment, an evaluation of the effectiveness of the hands-on training, shall test the ability of the trainees to demonstrate satisfactory performance of work practices and procedures established in Part VIII (18VAC15-50-330 et seq.) of this chapter, as well as any other skills demonstrated in the course.

E. The use of a proficiency test in lieu of a hands-on assessment and course test may be considered by the training provider. An accredited renovation training program that

offers a proficiency test shall assure that the test consists primarily of an evaluation of the effectiveness and reliability of a student's ability to conduct a particular renovation activity. The proficiency test shall also cover all topics and skills addressed in the discipline specific course. For a training program to make use of a proficiency-based course, the proficiency-based course must be approved by the board in the same manner as approval for any other course, including fees.

18VAC15-50-270. Course completion certificates.

The accredited renovation training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

1. A unique certificate number.

2. The name, a unique identification number, and address of the individual.

3. The name of the particular course that the individual completed.

4. The dates of course completion and test passage.

5. The expiration date. Training certificates shall expire 60 months from the date of course completion.

6. The name, address, and telephone number of the training program.

7. The name and signature of the training manager and principal instructor.

8. The language in which the course was taught.

9. A photograph of the individual.

18VAC15-50-280. Quality control plan.

The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time and shall contain at least the following elements:

1. Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

2. Procedures for the training manager's annual review of the principal instructor's competency.

18VAC15-50-290. Training program recordkeeping and provision of records to the board.

A. Each accredited renovation training program shall comply with the training program recordkeeping requirements in accordance with 40 CFR Part 745 with the exception that the accredited training program shall retain records at the address specified on the training program application or as updated with the board for a minimum of five years and six months.

B. The training manager shall notify the board at least 48 hours prior to the start date of any dust sampling technician or renovator course.

C. The training manager shall provide an updated notification when dust sampling technician or renovator courses will begin on a date other than the start date specified in the original notification as follows:

1. For dust sampling technician or renovator courses beginning before the start date provided to the board, an updated notification must be received by the board at least 48 hours before the new start date.

2. For dust sampling technician or renovator courses beginning after the start date provided to the board, an updated notification must be received by the board at least 48 hours before the new start date provided to the board.

D. The training manager shall update the board of any change in location of the dust sampling technician or renovator courses at least 48 hours prior to the start date provided to the board.

E. Barring situations or circumstances beyond the control of the training provider, the training manager shall update the board regarding the cancellation of any dust sampling technician or renovator courses at least two business days prior to the start date provided to the board. For the purposes of this section, a business day shall mean Monday through Friday with the exception of holidays, in accordance with § 2.2-3300 of the Code of Virginia.

F. Each notification, including updates, shall include the following:

1. Notification type (original, revision, cancellation).

2. Training program name, Virginia accreditation number, address, and telephone number.

3. Course discipline, type (initial or refresher), and the language in which instruction will be given.

4. Dates and times of training.

5. Training locations and corresponding addresses and telephone numbers.

6. Principal instructor's name.

7. Training manager's name.

G. The training program participant list shall be completed by the training provider and training program participants daily.

H. The training program participant list shall be retained by the training provider for a minimum of five years and six months following the date of completion of the dust sampling technician or renovator courses.

I. The training manager shall provide the board the accredited renovation training program participant list no later than two business days following completion of the dust sampling technician or renovator courses.

J. The renovation training program participant list shall include the following:

1. Training program name, Virginia accreditation number, address, and telephone number.

2. Course discipline and type (initial or refresher).

3. Dates of training.

4. Each participant's name, address, social security number or Virginia DMV control number, course completion certificate number, and course test score.

5. Participant list type (original or revision).

6. Training manager's name.

K. Notification and training program participant lists shall be submitted electronically in the form prescribed by the department.

L. The training provider shall retain all examinations completed by training program participants for a minimum of five years and six months.

M. The board shall not recognize training certificates from approved training providers that fail to notify or fail to provide a training program participant list.

Part VII
Training Course Curricula Requirements

18VAC15-50-300. Renovator initial training course requirements.

A. The renovator course shall last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training. Hands-on training shall cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

B. The training course shall include, at a minimum, the following course topics:

1. Role and responsibility of a renovator.

2. Background information on lead and its adverse health effects.

3. Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

4. Procedures for using acceptable test kits to determine whether paint is lead-based paint.

5. Renovation methods to minimize the creation of dust and lead-based paint hazards.

6. Interior and exterior containment and cleanup methods.

7. Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.

8. Waste handling and disposal.

9. Providing on-the-job training to other workers.

10. Record preparation.

18VAC15-50-310. Dust sampling technician initial training course requirements.

A. The dust sampling technician course shall last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training. Hands-on training shall cover dust sampling methodologies.

B. The training course shall include, at a minimum, the following course topics:

1. Role and responsibility of a dust sampling technician.

2. Background information on lead and its adverse health effects.

3. Background information on federal, state, and local regulations and guidance that pertains to renovation activities.

4. Dust sampling methodologies.

5. Clearance standards and testing.

6. Report preparation.

18VAC15-50-320. Refresher training criteria.

A. Renovator refresher training courses shall last a minimum of four hours and review the curriculum topics of the full-length course specified in 18VAC15-50-300.

B. Dust sampling technician refresher training courses shall last a minimum of four hours and review the curriculum topics of the full-length course specified in 18VAC15-50-310.

C. Renovator and dust sampling technician refresher courses shall also address:

1. An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

2. Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

3. Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

Part VIII
Standards for Conducting Renovation Activities

18VAC15-50-330. General requirements.

A. All renovation activities performed for compensation in target housing and child-occupied facilities shall be conducted in accordance with 40 CFR Part 745.

B. Persons licensed to conduct post-renovation clearance procedures shall be independent of and have no financial interest in or association by employment, contract, or other agreement with the licensed firm that performs or precleans the renovation activity being cleared.

18VAC15-50-340. Prerenovation education requirements.

All licensed renovation contractors shall comply with the information distribution requirement related to lead-based paint renovation activities in accordance with 40 CFR Part 745.

18VAC15-50-350. Renovation activities.

A. Only the following persons may conduct renovation activities for compensation in target housing and child-occupied facilities:

1. An individual licensed by the board as a renovator. The licensed renovator shall be the sole proprietor of a licensed renovation contractor firm or work for a licensed renovation contractor through employment, contract, or other agreement.

2. An individual trained by and under the supervision of a licensed renovator. The licensed renovator shall be the sole proprietor of a licensed renovation contractor firm or work for a licensed renovation contractor through employment, contract, or other agreement.

18VAC15-50-360. Renovation contractor.

All lead-based paint renovation activities performed for compensation in target housing and child-occupied facilities shall be conducted in accordance with 40 CFR Part 745.

18VAC15-50-370. Renovator.

A. All lead-based paint renovation activities performed for compensation in target housing and child-occupied facilities shall be conducted in accordance with 40 CFR Part 745.

B. The licensed renovator shall have with him at the work site a copy of his current initial course completion certificate or his current refresher course completion certificate and a copy of his valid Virginia renovator license.

18VAC15-50-380. Dust sampling technician.

A. A licensed dust sampling technician, a licensed lead inspector, or a licensed lead risk assessor may conduct dust sampling for renovation activities.

B. When performing dust clearance sampling, a licensed dust sampling technician, a licensed lead inspector, or a licensed lead risk assessor shall collect dust samples in accordance with 40 CFR Part 745, send the collected samples to a laboratory recognized by EPA under § 405(b) of the Toxic Substance Control Act (15 USC § 2685(b)), and compare the results to the clearance levels in accordance with 40 CFR Part 745.

C. The licensed dust sampling technician shall complete a written clearance report that includes laboratory results. A copy of the clearance report shall be provided to the person with whom the dust sampling technician entered into a contract.

D. The licensed dust sampling technician shall have with him at the work site a copy of his current initial course completion certificate or his current refresher course completion certificate and a copy of his valid Virginia dust sampling technician license.

18VAC15-50-390. Activities conducted after successful cleaning verification or clearance testing.

Activities that do not disturb paint, such as repainting walls that have been properly prepared, are not regulated under this chapter if they are conducted after post-renovation cleaning verification has been performed or clearance testing results show dust lead levels below the clearance standards specified in 40 CFR Part 745.

18VAC15-50-400. Emergency renovations.

A. Emergency renovations are exempt from the warning sign, containment, waste handling, training, and licensure requirements of this chapter to the extent necessary to respond to the emergency.

B. Emergency renovations are not exempt from cleaning and clearance requirements or recordkeeping requirements specified in 40 CFR Part 745.

18VAC15-50-410. Recognized testing methodologies.

A. When requested by the party contracting for renovation services, the licensed renovator may use only an EPA-recognized paint testing methodology to determine whether components and surfaces to be affected by the renovation activities contain lead-based paint. The certified renovator shall test each distinct component and surface to be affected, follow the manufacturer's instructions for use of the paint test kit, and document the records in accordance with 18VAC15-50-170.

B. Recognized test kits shall meet or exceed both the negative response criteria and positive response criteria as specified in 40 CFR Part 745.

VA.R. Doc. No. R10-2047; Filed July 29, 2013, 11:37 a.m.

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-280).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: November 1, 2013.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: Subdivision 5 of § 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Purpose: The amendment is needed to keep the barbering and cosmetology regulations consistent with the tattooing regulations and esthetics regulations, which already contain the language proposed in this regulatory action. Additionally, as the language currently stands, if an applicant attempts to obtain a license, certificate, or permit by false or fraudulent representation, the board does not possess the authority to deny the application of the applicant. The language allows the

board to initiate proceedings in accordance with the Administrative Process Act against an applicant who attempted to obtain a license, certificate, or permit by false or fraudulent representation. Under the current language of the regulations, even when the applicant is suspected of having attempted to obtain a license, certificate, or permit by false or fraudulent representation, the board must issue the license before it can initiate proceedings against the applicant (now a licensee). This poses a substantial risk to the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being used to amend the board's regulation language for consistency with other board regulations. The amendment is not expected to be controversial, as it is anticipated that regulants of the board would favor ensuring those who apply for licensure do not do so through false or fraudulent representation.

Substance: The proposed amendment makes the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty. Individuals or entities that attempted to obtain a license, certificate, or permit by false or fraudulent representation would be subject to license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty in accordance with Administrative Process Act.

Issues: The advantage to the public is a reduction in the potential risk of a licensee providing services to the public who may have obtained his license, certificate, or permit by false or fraudulent representation. The primary advantage to the agency is having a regulation to address incidences of individuals who attempted to obtain a license, certificate, or permit by false or fraudulent representation, which ultimately protects the health, safety, and welfare of citizens.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetology (Board) proposes to amend its regulations so that having attempted to obtain a license, certificate or permit by fraudulent representation is grounds for denial or revocation of Board issued credentials.

Result of Analysis. Benefits will likely outweigh costs for this regulatory change.

Estimated Economic Impact. Current regulations allow the Board to revoke or refuse to issue initial or subsequent licenses, certifications or permits for many reasons; amongst these, the Board can revoke or refuse to issue these credentials if the licensee, certificate holder, permit holder or applicant obtained, renewed, or reinstated a license, certificate or permit by false or fraudulent representation. The Board proposes to add attempted to obtain to this sentence so that the Board has the power to refuse licensure to someone who is not a current licensee, certificate holder or permit holder but who has attempted to obtain a license using false or fraudulent information.

This regulatory change is unlikely to impact current licensees, certificate holders or permit holders unless they fail to renew their Board issued credentials within 30 days of their renewal date, are then required to reinstate their credentials and they attempt to get them reinstated by lying to the Board. Individuals who fall into this category will likely have their reinstatement application denied and may be subject to Board-issued fines. With this proposed regulatory change, applicants for licensure, certification or permit who lie in attempt to gain licensure will have that licensure denied. To the extent that the public is protected from poor and harmful services on account of the Board's credentialing programs, they will also benefit from this proposed regulatory change that allows the Board to refuse licensure, certification or permit to individuals who are attempting fraud.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that there are 4,500 entities currently licensed, certified or permitted under these regulations. All of these entities will be affected by these regulatory changes.

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 legal 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. DPOR reports that 768 small businesses will be affected by these proposed regulations. These businesses are unlikely to incur any costs unless affected small business owners attempt to obtain Board credentials fraudulently.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board likely cannot further reduce any small business costs while at the same time stopping individuals from attempting to obtain Board credentials fraudulently.

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 14 (10). 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 Board for Barbers and Cosmetology concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment makes the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for denial or revocation of board-issued credentials.

18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

A. The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder~~, and to~~; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit~~,~~; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee, certificate holder, permit holder or applicant is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, cosmetologist, or nail technician;

2. The licensee, certificate holder, permit holder or applicant is convicted of fraud or deceit in the practice or teaching of barbering, cosmetology, or nail care;

3. The licensee, certificate holder, permit holder or applicant attempted to obtain, obtained, renewed or reinstated a license, certificate, or permit by false or fraudulent representation;

4. The licensee, certificate holder, permit holder or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of these regulations or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, cosmetologist, or nail technician may practice or offer to practice;

5. The licensee, certificate holder, permit holder or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

6. A licensee, certificate holder, or permit holder fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee, certificate holder, permit holder or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee, certificate holder, permit holder or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit that has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee, certificate holder, permit holder or applicant has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

B. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in these regulations;

2. The owner or director of the approved school permits or allows a person to teach in the school without a current instructor certificate; or

3. The instructor, owner or director is guilty of fraud or deceit in the teaching of barbering, cosmetology or nail care.

C. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any barbershop, cosmetology or nail salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the shop or salon fails to comply with the sanitary requirements of barbershops or cosmetology or nail salons provided for in these regulations or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license or a temporary permit to practice as a barber, cosmetologist, or nail technician unless the person is duly enrolled as a registered apprentice.

D. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practices of barbering, cosmetology, or nail care.

VA.R. Doc. No. R13-2841; Filed July 26, 2013, 8:31 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC41-40. Wax Technician Regulations (amending 18VAC41-40-260).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: November 1, 2013.

Agency Contact: William Ferguson, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: Subdivision 5 of § 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Purpose: The amendment is needed to keep the wax technician regulations consistent with the board's tattooing regulations and esthetics regulations, which already contain the language proposed in this regulatory action. Additionally, as the language currently stands, if an applicant attempts to obtain a license, certificate, or permit by false or fraudulent representation, the board does not possess the authority to deny the application of the applicant. The language allows the board to initiate proceedings in accordance with the Administrative Process Act against an applicant who attempted to obtain a license, certificate, or permit by false or fraudulent representation. Under the current language of the regulations, even when the applicant is suspected of having attempted to obtain a license, certificate, or permit by false or fraudulent representation, the board must issue the license before it can initiate proceedings against the applicant (now a licensee). This poses a substantial risk to the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being used to amend the board's regulation language for consistency with other board regulations. The amendment is not expected to be controversial as it is anticipated that regulants of the board would favor ensuring those who apply for licensure do not do so through false or fraudulent representation.

Substance: The proposed amendment makes the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty. Individuals or entities that attempted to obtain a license, certificate, or permit by false or fraudulent representation would be subject to license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty in accordance with the Administrative Process Act.

Issues: The advantage to the public is a reduction in the potential risk of a licensee providing services to the public who may have obtained his license, certificate, or permit by false or fraudulent representation. The primary advantage to the agency is having a regulation to address incidences of individuals who attempted to obtain a license, certificate, or permit by false or fraudulent representation, which ultimately protects the health, safety, and welfare of citizens.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetology (Board) proposes to delete the word attempting and add the word attempted to the section of its wax technician regulations that allow the Board to refuse licensure or certification to individuals who use false or fraudulent representations to gain Board credentials.

Result of Analysis. Benefits will likely outweigh costs for this regulatory change.

Estimated Economic Impact. Current regulations allow the Board to revoke or refuse to issue initial or subsequent licenses or certifications for many reasons; amongst these, the Board can revoke or refuse to issue these credentials if the licensee, certificate holder, temporary licensee or applicant attempting to obtain, obtained, renewed, or reinstated a license by false or fraudulent representation. The Board proposes to change attempting to obtain to attempted to obtain in this sentence. This change will not only make this sentence grammatically coherent but will also allow conformity with other Board licensure programs.

Since the Board is only changing the grammar, but not the meaning, of a regulatory requirement, no affected entity is likely to incur any additional costs. To the extent that this change allows better understanding for the public and appropriate regulatory conformity between Board programs, both the public and the Board's regulated entities will likely benefit.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that there are 83 entities currently licensed or certified under these regulations. All of these entities will be affected by these regulatory changes.

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 legal 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. DPOR reports that 21 small businesses will be affected by these proposed regulations. These businesses are unlikely to incur any costs on account of this regulatory change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Affected small businesses are unlikely to incur any costs on account of this regulatory change.

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 14 (10). 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 Board for Barbers and Cosmetology concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment makes the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for denial or revocation of board-issued credentials.

18VAC41-40-260. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

A. The board may, in considering the totality of the circumstances, fine any licensee or temporary license holder, and suspend or revoke or refuse to renew or reinstate any license, certificate, or temporary license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee, certificate holder, temporary license holder or applicant is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a wax technician;

2. The licensee, certificate holder, temporary license holder or applicant has been convicted of fraud or deceit in the practice or teaching of waxing;

3. The licensee, certificate holder, temporary license holder or applicant ~~attempting~~ attempted to obtain, obtained, renewed or reinstated a license, certificate, or temporary license by false or fraudulent representation;

4. The licensee, certificate holder, temporary license holder or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of these regulations or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of

the establishment in which any wax technician may practice or offer to practice;

5. The licensee, certificate holder, temporary license holder or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

6. A licensee, certificate holder, or temporary license holder fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license. The board shall not be responsible for the licensee's, certificate holder's, or temporary license holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or temporary license holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee, certificate holder, temporary license holder or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee, certificate holder, temporary license holder or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or temporary license in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or temporary license that has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee, certificate holder, or temporary license holder has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of waxing. The board shall have the authority to determine, based upon all the information available, including the regulant's record of prior convictions, whether the regulant is unfit or unsuited to engage in the profession of waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The regulant shall provide a certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the regulant to the board within 10 days after all appeal rights have expired.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in these regulations;

2. The owner or director of the approved school permits or allows a person to teach in the school without a current instructor certificate; or

3. The instructor, owner or director is guilty of fraud or deceit in the teaching of waxing.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any waxing salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the salon fails to comply with the sanitary requirements of waxing salons provided for in these regulations or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license or a temporary license to practice as a wax technician.

D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of waxing.

VA.R. Doc. No. R13-2843; Filed July 26, 2013, 8:33 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-220).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: November 1, 2013.

Agency Contact: William B. Ferguson, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: Subdivision 5 of § 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Purpose: The amendment is needed to keep the body piercing regulations consistent with the tattooing regulations and esthetics regulations, which already contain the proposed language. Additionally, as the language currently stands, if an applicant attempts to obtain a license by false or fraudulent representation, the board does not possess the authority to

deny the application of the applicant. The language allows the board to initiate proceedings in accordance with the Administrative Process Act against an applicant who attempted to obtain a license by false or fraudulent representation. Under the current language of the regulations, even when the applicant is suspected of having attempted to obtain a license by false or fraudulent representation, the board must issue the license before it can initiate proceedings against the applicant (now a licensee). This poses a substantial risk to the health, safety, or welfare of citizens.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being used to amend the board's regulation for consistency with other board regulations. The amendment is not expected to be controversial, as it is anticipated that regulants of the board would favor ensuring those who apply for licensure do not do so through false or fraudulent representation.

Substance: The proposed amendment makes the attempted obtainment of a license by false or fraudulent representation grounds for license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty. Individuals who attempt to obtain a license by false or fraudulent representation would be subject to license revocation or suspension; denial of application or renewal or reinstatement of license; or imposition of a monetary penalty in accordance with Administrative Process Act.

Issues: The advantage to the public is a reduction in the potential risk of a licensee who may have obtained his license by false or fraudulent representation providing services to the public; there are no disadvantages. The primary advantage to the agency is having a regulation to address incidences of individuals who attempt to obtain a license by false or fraudulent representation, which ultimately protects the health, safety, and welfare of citizens; there are no disadvantages. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetology (Board) proposes to amend its body piercing regulations so that having attempted to obtain a license by fraudulent representation is grounds for denial or revocation of Board issued credentials.

Result of Analysis. Benefits will likely outweigh costs for this regulatory change.

Estimated Economic Impact. Current regulations allow the Board to revoke or refuse to issue initial or subsequent licenses for many reasons; amongst these, the Board can revoke or refuse to issue these credentials if the licensee or applicant obtained, renewed, or reinstated a license by false or fraudulent representation. The Board proposes to add attempted to obtain to this sentence so that the Board has the power to refuse licensure to someone who is not a current licensee, but who has attempted to obtain a license using false or fraudulent information.

This regulatory change is unlikely to impact current licensees unless they fail to renew their Board issued credentials within 30 days of their renewal date, are then required to reinstate their credentials and they attempt to get them reinstated by lying to the Board. Individuals who fall into this category will likely have their reinstatement application denied and may be subject to Board-issued fines. With this proposed regulatory change, applicants for licensure who lie in attempt to gain licensure will have that licensure denied. To the extent that the public is protected from poor and harmful services on account of the Board's credentialing programs, they will also benefit from this proposed regulatory change that allows the Board to refuse licensure to individuals who are attempting fraud.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that there are 189 entities currently licensed, certified or permitted under these regulations. All of these entities will be affected by these regulatory changes.

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 legal 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. DPOR reports that 23 small businesses will be affected by these proposed regulations. These businesses are unlikely to incur any costs unless affected small business owners attempt to obtain Board credentials fraudulently.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board likely cannot further reduce any small business costs while at the same time stopping individuals from attempting to obtain Board credentials fraudulently.

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 14 (10). 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 Board for Barbers and Cosmetology concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment makes the attempted obtainment of a license by false or fraudulent representation grounds for (i) license revocation or suspension; (ii) denial of application for license or of renewal or reinstatement of license; or (iii) imposition of a monetary penalty.

18VAC41-60-220. Grounds for license revocation or suspension or probation; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

A. The board may, in considering the totality of the circumstances, fine any licensee and suspend, place on probation or revoke or refuse to renew or reinstate any license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee is incompetent or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a body piercer or body piercer ear only;

2. The licensee or applicant is convicted of fraud or deceit in the practice body piercing or body piercing ear only;

3. The licensee or applicant attempted to obtain, obtained, renewed, or reinstated a license by false or fraudulent representation;

4. The licensee or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which body piercers or body piercers ear only may practice or offer to practice;

5. The licensee or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

6. A licensee fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit which has been the subject of disciplinary action in any other jurisdiction;

9. The licensee or applicant has been convicted or found guilty in any jurisdiction of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this section. The record of a 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; or

10. The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any misdemeanor or felony.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any body-piercing salon or body-piercing ear only salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the body-piercing salon or body-piercing ear only salon fails to comply with the facility requirements of body-piercing salons or body-piercing ear only salons provided for in this chapter or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license to practice as a body piercer or body piercer ear only unless the person is duly enrolled as an apprentice.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take

sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of body piercing or body piercing ear only.

VA.R. Doc. No. R13-2844; Filed July 26, 2013, 8:33 a.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-170).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

September 9, 2013 - 5 p.m. - City of Chesapeake Council Chamber, 306 Cedar Road Chesapeake, VA

September 24, 2013 - 1 p.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

September 25, 2013 - 6 p.m. - South County Library, 6303 Merriman Road, Roanoke, VA

October 3, 2013 - 5 p.m. - Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 2-3, Fairfax, VA

October 24, 2013 - 5 p.m. - City of Bristol, Council Chambers, 300 Lee Street, Bristol, VA

Public Comment Deadline: October 25, 2013.

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.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the board's discretion but shall not be in conflict with the purposes of the statutory authority.

Purpose: The Board for Contractors, along with other regulatory boards, was tasked by the Governor to review its regulations to determine if any provisions could be identified as obsolete, unnecessary, or overly burdensome and subsequently eliminated. The board identified two current provisions of the regulations that can be identified as a burden to its licensees with no measurable level of protection to the health, safety, and welfare of the general public.

Substance: 18VAC50-22-40 requires that the qualified individual, or individuals, of an applicant for a Class C license submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments remove this requirement.

18VAC50-22-50 requires that the qualified individual, or individuals, of an applicant for a Class B license submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments remove this requirement.

18VAC50-22-60 requires that the qualified individual, or individuals, of an applicant for a Class A license submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments remove this requirement.

18VAC50-22-170 currently prohibits the reinstatement of a license if more than one year has passed since the license has expired. The proposed amendments extend the reinstatement period from one year to two years after expiration.

Issues: The proposed amendments remove the burden of compiling and providing documentation of a past adverse financial history for the qualified individual for all three classes of license. Currently, the qualified individual, who may only be an employee of a licensed contractor, is held to the same reporting standard as the responsible managers (owners or officers) and the designated employee (the individual who completed the business examination), both of whom are referenced in §§ 54.1-1106 and 54.1-1108 of the Code of Virginia. While a licensed contractor is required to have a qualified individual who has demonstrated a level of technical expertise, this position is not based on any financial criteria, and the board does not hold this individual accountable for any disciplinary action that relates to the financial status of the company. Often, the applicant must compile this data, which may take several days or weeks to obtain, and submit it to the board for review, all of which can delay the awarding of a license to the business. The elimination of this requirement will result in an immediate reduction in the amount of time it takes for a company, with a qualified individual with an adverse financial history, to obtain its license. There is no reduction in the protection to the public as the individuals held accountable for the financial decisions made by the company (owners and officers) must still report past adverse financial events. This only affects the qualified individual.

The extension of the reinstatement period will allow an individual who may have inadvertently allowed his license to expire for more than one year to bring his license into compliance without the burden of having to complete the education and examination requirements of a new license.

The primary advantage to the Commonwealth is to allow businesses that must comply with the current regulations to obtain their licenses faster, allowing them to go to work faster. The agency will benefit from less documentation having to be tracked and reviewed during the normal course of processing the application. Any decrease in the amount of time currently spent processing applications directly affects the number of applications that may be processed, resulting in an overall decrease in the time it takes to process all applications.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will no longer require a qualified individual working for a contractor to report past adverse financial history and extend the license reinstatement period for all contractors from one year to two years after expiration.

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

Estimated Economic Impact. The proposed regulations will no longer require a qualified individual to report past adverse financial history such as any past-due debts, judgments, or defaults on bonds for all three classes of contractors license. A qualified individual is the person that has the technical skills in a particular licensing specialty or classification. For example, a contractor business with the home improvement specialty must have a qualified individual who has the requisite years of experience for the class of the license and who has successfully completed the home improvement technical examination. The Department of Professional Occupational Regulation (DPOR) estimates that there are approximately 20,000 persons listed as qualified individuals who do not serve as a member of responsible management or designated employee.

Currently, the qualified individual has been held to the same financial reporting standard as the responsible managers (owner/officers) and the designated employee (the individual who completed the business examination), both of whom are referenced in §§ 54.1-1106 and 54.1-1108 of the Code of Virginia. While a licensed contractor is required to have a qualified individual who has demonstrated a level of technical expertise, this position is not based on any financial criteria and the Board for Contractors (Board) does not hold this individual accountable for any disciplinary action that relates to the financial status of the company.

According to DPOR, compilation and submission of adverse financial history takes three to ten days and delays the awarding of a license to a business. The vast majority of these applications for licensure would have been approved upon initial review. Thus, the elimination of this requirement is expected to result in a reduction in the amount of time it takes for a company, with a qualified individual with an adverse financial history, to obtain its license and start performing work. No significant reduction in the protection afforded to the public by this requirement is expected because currently the Board does not use the adverse financial history of the qualified individual to determine eligibility for licensure. In addition, DPOR is likely to experience some reduction in its administrative costs from less documentation having to be tracked and reviewed during the normal course of processing the application.

Another proposed change will extend the reinstatement period for all contractors from one year to two years after expiration. After the reinstatement period ends, an applicant must apply for a new license and meet education and examination requirements of a new license. According to DPOR, the cost of additional education and examination requirements could reach $1,000. DPOR receives about 50 to 100 reinstatement applications per month, but how many applicants would have waited more than one year to reinstate is not known.

This change will give individuals that let their license lapse an additional year to pay the reinstatement fee to bring their license into compliance. This option will eliminate additional costs and wait time for a new application to be reviewed for those that would have renewed their license within the second year. Additionally, when a license is reinstated, it becomes active back to the last expiration date and, from a legal standpoint, the licensee is considered continually licensed during that time. This provides an additional protection to consumers who may have hired a contractor when the license was expired and, since he would have been considered unlicensed, does not have access to the Transaction Recovery Fund. In short, the extension of the reinstatement date will afford extra time for the licensee to become compliant as well as provide an extra year for the consumers to remain protected.

Businesses and Entities Affected. There are approximately 65,000 licensed contractors and 20,000 persons listed as qualified individuals who are not a member of responsible management or designated employee. Of these contractors, about 50 to 100 apply for a reinstatement every month.

Localities Particularly Affected. The proposed changes apply throughout the Commonwealth.

Projected Impact on Employment. Elimination of the past adverse financial history reporting for the qualified individual is anticipated to speed up the issuance of a license and consequently could have a positive impact on labor supply and demand as the qualified individual and the contractor can start performing work sooner.

The extension of the reinstatement period may allow a contractor to maintain his/her demand for labor for an additional year due to allowing him to reinstate his/her license without additional expense and delay. Elimination of the need for education and exam however is likely to reduce labor demand from providers of these services.

Finally, both changes are expected to decrease demand for labor due to reduced administrative workload at DPOR.

Effects on the Use and Value of Private Property. The compliance costs for the licensed contractors with a qualified individual and those with a lapsed license will be lower. The reduction in compliance costs would have a positive impact on the asset value of such businesses. However, providers of education and exam services for the contractors may experience a negative impact on their asset values due to reduced demand for their services.

Small Businesses: Costs and Other Effects. According to DPOR, the overwhelming majority of businesses licensed by the Board are small businesses, and the majority of those individuals licensed as tradesman are employed by small businesses. All of the economic effects discussed above apply to small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are anticipated to have a negative impact on the small businesses that provide education and exam services to contractor license applicants. There is no known alternative to minimize adverse impact on them while accomplishing the same goals.

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 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 Board for Contractors concurs with the analysis with one minor clarification. There are more than 55,000 qualified individuals actively identified in the Board for Contractors licensing database. Of those, it is estimated that 20,000 do not also serve as a member of responsible management or designated employee of the company, therefore it would be those 20,000 individuals and the businesses with whom they are affiliated that would be the most affected by this proposed amendment.

Summary:

The proposed amendments (i) remove the past adverse financial history reporting requirement for the qualified individual for all three classes of contractor license and (ii) extend the reinstatement period for a license from one year to two years after expiration.

Part II
Entry

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm~~, its qualified individual or individuals,~~ and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm~~, the qualified individual,~~ and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a

disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, ~~qualified individual or individuals,~~ and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, ~~the qualified individual,~~ and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a

conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (DHCD explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, ~~qualified individual or individuals,~~ and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, ~~the qualified individual,~~ and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

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	$405*
Class B Reinstatement	with reinstatement application	$460*
Class A Reinstatement	with reinstatement application	$490*

*Includes renewal fee listed in 18VAC50-22-140.

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~~ two years from the expiration date of the license has passed.

VA.R. Doc. No. R13-3533; Filed July 30, 2013, 1:48 p.m.

Proposed Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-220; repealing 18VAC50-30-73, 18VAC50-30-75).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

September 9, 2013 - 5 p.m. - City of Chesapeake Council Chamber, 306 Cedar Road Chesapeake, VA

September 24, 2013 - 1 p.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

September 25, 2013 - 6 p.m. - South County Library, 6303 Merriman Road, Roanoke, VA

October 3, 2013 - 5 p.m. - Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 2-3, Fairfax, VA

October 24, 2013 - 5 p.m. - City of Bristol, Council Chambers, 300 Lee Street, Bristol, VA

Public Comment Deadline: October 25, 2013.

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.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose: The Board for Contractors, along with other regulatory boards, was tasked by the Governor to review its regulations to determine if any provisions could be identified as obsolete, unnecessary, or overly burdensome and subsequently eliminated. The board identified two current provisions of the regulations that can be identified as a financial burden to its licensees with no measurable level of protection to the health, safety, and welfare of the general public.

Substance: Following are the proposed amendments to 18VAC50-30 (Individual License and Certification Regulations):

18VAC50-30-10 - Removes the definition of "inactive tradesman" as the term will be obsolete upon the elimination of the continuing education requirement for renewal of tradesman licenses.

18VAC50-30-73 - Repeals this section as the inactive license will no longer be required upon the elimination of the continuing education requirement for renewal of tradesman licenses.

18VAC50-30-75 - Repeals this section as the activation of a license that was previously inactive will no longer be required upon the elimination of the continuing education requirement for renewal of tradesman licenses.

18VAC50-30-120 B - Eliminates the requirement that a licensed tradesman must complete continuing education in order to meet the eligibility requirements to renew or reinstate a license.

18VAC50-30-130 E - Extends the reinstatement period for a license from one year since the expiration date to two years after expiration.

18VAC50-30-220 A - Removes references to continuing education courses that would be offered to tradesman as they will no longer be required once the continuing education requirement for renewal of tradesman licenses is eliminated.

Issues: The proposed amendments remove the requirement of continuing education completion for renewal of a tradesman license. Currently, existing tradesmen are required to complete three hours of continuing education per specialty per licensing cycle. The cost of completing classes ranges from approximately $50 - $450, depending on the number of specialties, the method of instructions, the availability of courses, and cost of any textbooks or required supplies. This does not include any travel that may be required or productivity lost as a result of being away from work. The

elimination of this requirement will result in an immediate reduction in the cost of maintaining a license for the licensee. In those instances where an employer pays for the licensing expenses of an employee, there will also be an immediate reduction in the cost associated with those employers.

In addition to the less burdensome renewal criteria for the licensees, these amendments allow the licensing staff of the Board for Contractors to have more resources available for the processing of new applications. The licensing staff has one staff member currently spending approximately 1,500 hours per year processing education rosters and school submissions. Additionally, call center staff spends approximately 2,000 hours per year answering telephone calls from licensees involving continuing education issues.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to amend its regulations that govern individual licenses and certifications. Specifically, the Board proposes to no longer require continuing education for all categories of tradesmen but certified elevator mechanics and certified water well systems providers (continuing education is required by statute for these two certifications). The Board also proposes to eliminate the inactive licensure classification for tradesmen who will no longer have to complete continuing education.

Result of Analysis. Benefits likely outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. Currently, these regulations require tradesmen with plumbing, electrical, and heating ventilation and cooling designations to complete three hours of continuing education for each designation as a condition of biennial active license or certification renewal. Tradesmen with liquid petroleum gas fitters and natural gas fitter provider designations must currently complete one hour of continuing education for each designation biennially. Tradesmen who, for whatever reason, want to keep their license or certification but who do not plan to practice their trade may currently pay a renewal fee and obtain an inactive license or certification without completing the continuing education required for active renewal.

Board staff reports that requiring continuing education has not appreciably decreased the number of disciplinary cases brought before the Board but that there is anecdotal evidence that requiring continuing education is leading to tradesmen forgoing licensure in large numbers.[1] Board staff further reports that tradesmen usually maintain more than one designation and that requiring continuing education likely adds at least $400 (on average) plus time costs and possibly travel expenses to the $90 fee for renewing a tradesmen license or certificate. Because continuing education for tradesmen does not seem to have an appreciable benefit and because it is an added expense that might affect tradesmen's ability to maintain licensure or certification, the Board now proposes to do away with the continuing education requirements for the tradesmen designations listed above. At the same time, the Board proposes to eliminate inactive licensure since the only difference between inactive and active licensure is the continuing education requirement.

These changes will benefit the Board, whose staff will no longer have to field queries and complaints about tradesmen continuing education (34.33% of the calls fielded between January and April of 2013). These changes will also benefit tradesmen, who will no longer have to pay for relatively expensive continuing education in order to maintain licensure or certification. Continuing education providers will not benefit from these changes as they will no longer have a state enforced requirement that tradesmen pay for and complete continuing education in order to renew their licenses or certificates. Providers of continuing education will likely suffer a loss that is close in total to the fees that they would collect from providing classes minus the money they could earn at some other task during the time they now spend training others on account of current regulations. Since this loss will likely be less than the benefit to tradesmen in general and to the state, and since the public is unlikely to be harmed on account of elimination of continuing education requirements, benefits likely outweigh costs for this proposed regulatory action.

Businesses and Entities Affected. These proposed regulatory changes will affect almost all tradesmen licensed or certified by the Board. Board staff reports that the Board currently licenses or certifies 27,780 tradesmen. All tradesmen but those certified as elevator mechanics and water well systems providers will be affected. All providers of eliminated continuing education will also be affected by these proposed changes. Board staff reports that there are 161 entities that provide continuing education in the Commonwealth for affected tradesmen. This continuing education provider total comprises nine state government agencies and three private companies (that provide continuing education only for their employees), 17 trade organizations and nine union halls (providing continuing education for their members), four other government entities, 29 community colleges or other institutions of higher learning and 90 other providers of continuing education. Board staff reports that approximately half of the 90 other providers of continuing education in the state are small business tradesmen or contractors who provide continuing education as a side business. Board staff further reports that 52 of the 161 continuing education providers listed above are based outside of the Commonwealth.

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

Projected Impact on Employment. Without the requirement that they complete relatively expensive continuing education requirements as a condition of license renewal, more individuals may choose to maintain licensure or certification and work as tradesmen in the Commonwealth. Since

continuing education will no longer be required, providers of continuing education will see a likely sharp decrease in demand for their services. Continuing education providers will, however, be able to partly or fully mitigate their lost income by earning money working at other tasks instead of offering classes.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small businesses tradesmen who do not provide continuing education will likely be adversely affected by this regulatory action. The approximately 45 tradesmen or contractors who provide continuing education will lose the income derived from having continuing education as a requirement of tradesmen license or certificate renewal. Continuing education providers will, however, be able to partly or fully mitigate their lost income by earning money working at other tasks instead of offering classes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternatives to this regulatory change that would decrease the adverse impact.

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 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Board staff reports that, in the last five years since continuing education has been required, the Board has experienced a 18.59% drop in the number of tradesmen licensed or certified by the Board; with the largest drop occurring in the number of plumbing and gas fitting specialty licenses which dropped more than 25%. The number of contractors licensed by the Board only decreased 8.33% during this same time period. Board staff reports that phone calls, letters and emails from tradesmen support an assertion that maintaining licensure with the added expense of continuing education is too burdensome, especially during economic downturns.

Agency's Response to Economic Impact Analysis: The Board for Contractors concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) eliminate continuing education as a prerequisite for renewal for tradesman licenses for most trades (trades that have statutory continuing education requirements still have those continuing education requirements), (ii) extend the license reinstatement period from one to two years following expiration date, and (iii) eliminate the inactive license classification.

Part I
General

18VAC50-30-10. Definitions.

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect

hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the board, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

~~"Inactive tradesman " means an individual who meets the requirements of 18VAC50-30-73 and is licensed under that section.~~

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker, elevator mechanic, or water well systems provider.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

18VAC50-30-73. ~~Licensing of inactive tradesmen.~~ (Repealed.)

~~Any individual who is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia may be licensed as an inactive tradesman by completing a form provided by the board.~~

18VAC50-30-75. ~~Activation of license.~~ (Repealed.)

~~Any inactive tradesman may activate a license to practice as a tradesman by completing a form provided by the board and completing the continuing education requirements for the current licensing cycle. Any tradesman that has not had an active license for a period of greater than three years will be required to meet the current prelicensing eligibility criteria.~~

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. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.~~

~~C.~~ B. 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.~~ C. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 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.~~ D. Renewal fees are as follows:

Tradesman license	$90
Liquefied petroleum gas fitter license	$90
Natural gas fitter provider license	$90
Backflow prevention device worker certification	$90
Elevator mechanic certification	$90
Water well systems provider certification	$90

All fees are nonrefundable and shall not be prorated.

~~F.~~ E. 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.~~ F. 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.~~ G. 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.~~ 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.

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	$140*
Liquefied petroleum gas fitter license	$140*
Natural gas fitter provider license	$140*
Backflow prevention device worker certification	$140*
Elevator mechanic certification	$140*
Water well systems provider certification	$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~~ two years 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.

18VAC50-30-220. Continuing education courses.

A. ~~All courses offered by continuing education providers must be approved by the board and shall cover articles of the current edition of the building code for the applicable license specialty. For tradesmen with the electrical specialty, the National Electrical Code; for tradesmen with the plumbing specialty, the International Plumbing Code; for tradesmen with HVAC specialty, the International Mechanical Code; for gas fitters, liquefied petroleum gas fitters, and natural gas fitters, the International Fuel Gas Code.~~ Courses offered by continuing education providers for elevator mechanics shall cover articles of the current edition of the building code and other applicable laws governing elevators, escalators, or related conveyances. Courses offered by continuing education providers for water well systems providers shall cover the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction.

B. Approved continuing education providers shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider and the approved provider number;

2. The name of the course;

3. The date(s), time(s), and location(s) of the course;

4. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;

5. Course and material fees;

6. Course syllabus.

C. Courses may be approved retroactively; however, no regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

VA.R. Doc. No. R13-3534; Filed July 30, 2013, 1:48 p.m.

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22).**

18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-35).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-35).

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-26).

18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-25).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-35).

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-150).

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-30).

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

Effective Date: September 25, 2013.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The amendments provide for a one-time fee reduction applicable to the next renewal cycle in 2014 or 2015 for all professions regulated by the Board of Medicine.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be $302, and the fee for licensure in chiropractic shall be $277.

D. The fee for a temporary authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be $25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be $55. The annual renewal fee shall be $35. For renewal of a limited professorial or fellow license in 2014, the fee shall be $30. An additional fee for late renewal of licensure shall be $15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be $55. The annual renewal fee shall be $35. For renewal of a limited license to interns and residents in 2014, the fee shall be $30. An additional fee for late renewal of licensure shall be $15.

G. The fee for a duplicate wall certificate shall be $15; the fee for a duplicate license shall be $5.

H. The fee for biennial renewal shall be $337 for licensure in medicine, osteopathic medicine, and podiatry and $312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be $115 for licensure in medicine, osteopathic medicine, and podiatry and $105 for licensure in chiropractic. For renewal of licensure in 2014, the fee shall be $293 for licensure in medicine, osteopathic medicine, and podiatry and $271 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be $2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be $497 for licensure in medicine, osteopathic medicine, and podiatry ($382 for reinstatement application in addition to the late fee of $115) and $472 for licensure in chiropractic ($367 for reinstatement application in addition to the late fee of $105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure shall be $10, and the fee for certification of grades to another jurisdiction by the board shall be $25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be $168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $55 for each renewal cycle. For renewal of an inactive license in 2014, the fee shall be $145.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $75, due in the licensee's birth month. An additional fee for late renewal of licensure

shall be $25 for each renewal cycle. For renewal of a restricted volunteer license in 2014, the fee shall be $65.

N. The fee for a returned check shall be $35.

18VAC85-40-35. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be $130.

2. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month. For 2015, the fee for renewal of an active license shall be $115, and the fee for renewal of an inactive license shall be $60.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia, which has lapsed for a period of two years or more, shall be $180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of good standing/verification to another jurisdiction shall be $10; the fee for certification of grades to another jurisdiction shall be $25.

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.

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be $130.

2. The biennial fee for renewal of an active license shall be $135 and for renewal of an inactive license shall be $70, payable in each odd-numbered year in the birth month of the licensee. For 2015, the fee for renewal of an active license shall be $115, and the fee for renewal of an inactive license shall be $60.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.

5. The fee for review and approval of a new protocol submitted following initial licensure shall be $15.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

8. The fee for a returned check shall be $35.

9. The fee for a letter of good standing/verification to another jurisdiction shall be $10.

10. 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.

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; for 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 licensee in each even-numbered year. For 2014, the fee for renewal of an active license as an occupational therapist shall be $115; for an occupational therapy assistant, it shall be $60. For renewal of an inactive license in 2014, the fees shall be $60 for an occupational therapist and $30 for an occupational therapy assistant.

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.

18VAC85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist or radiologist assistant licensure shall be $130.

2. The application fee for the radiologic technologist-limited licensure shall be $90.

3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement for a radiologic technologist or a radiologist assistant.

1. The fee for active license renewal for a radiologic technologist shall be $135, and the fee for inactive license renewal shall be $70. For 2015, the fees for renewal shall be $115 for an active license as a radiologic technologist and $60 for an inactive license. If a radiologist assistant holds a current license as a radiologic technologist, the renewal fee shall be $50. If a radiologist assistant does not hold a current license as a radiologic technologist, the renewal fee shall be $150. For renewal of a radiologist assistant license in 2015, the fee shall be $40 for a radiologist assistant with a current license as a radiologic technologist and $130 for a radiologist assistant without a current license as a radiologic technologist.

2. An additional fee of $50 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a radiologic technologist or a radiologist assistant license that has lapsed for a period of two years or more shall be $180 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

D. Licensure renewal and reinstatement for a radiologic technologist-limited.

1. The fee for active license renewal shall be $70, and the fee for inactive license renewal shall be $35. For 2015, the fees for renewal shall be $60 for an active license as a radiologic technologist and $30 for an inactive license.

2. An additional fee of $25 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $120 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

E. Other fees.

1. The application fee for a traineeship as a radiologic technologist or a radiologic technologist-limited shall be $25.

2. The fee for a letter of good standing or verification to another state for licensure shall be $10; the fee for certification of scores to another jurisdiction shall be $25.

3. The fee for a returned check shall be $35.

4. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

18VAC85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be $130.

2. The fee for biennial active license renewal shall be $135; the fee for biennial inactive license renewal shall be $70. For 2015, the fee for renewal of an active license shall be $115, and the fee for renewal of an inactive license shall be $60.

3. The additional fee for processing a late renewal within one renewal cycle shall be $50.

4. The fee for reinstatement of a license which has expired for two or more years shall be $180.

5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be $10.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a duplicate wall certificate shall be $15.

8. The fee for a duplicate renewal license shall be $5.

9. The fee for a returned check shall be $35.

10. 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.

Part V
Fees

18VAC85-120-150. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. The following fees have been adopted by the board:

1. The application fee shall be $130.

2. The fee for renewal of licensure shall be $135 and shall be due in the licensee's birth month, in each odd-numbered year.

3. A fee of $50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be $180 and shall be submitted with an application for reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate renewal license shall be $5, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of verification to another jurisdiction shall be $10.

9. The fee for an inactive license shall be $70, and the fee for a late renewal shall be $25.

10. For 2015, the fee for renewal of an active license shall be $115, and the fee for renewal of an inactive license shall be $60.

18VAC85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be $277.

2. The fee for biennial active license renewal shall be $312; the additional fee for late renewal of an active license within one renewal cycle shall be $105.

3. The fee for biennial inactive license renewal shall be $168; the additional fee for late renewal of an inactive license within one renewal cycle shall be $55.

4. The fee for reinstatement of a license that has expired for a period of two years or more shall be $367 in addition to the late fee. The fee shall be submitted with an application for licensure reinstatement.

5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be $10.

6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be $2,000.

7. The fee for a duplicate wall certificate shall be $15.

8. The fee for a duplicate renewal license shall be $5.

9. The fee for a returned check shall be $35.

10. For 2015, the fee for renewal of an active license shall be $270, and the fee for renewal of an inactive license shall be $140.

VA.R. Doc. No. R13-3711; Filed August 5, 2013, 3:07 p.m.

Proposed Regulation

Title of Regulation: **18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (adding 18VAC85-140-10 through 18VAC85-140-190).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.15 of the Code of Virginia.

Public Hearing Information:

October 11, 2013 - 1 p.m. - 9960 Mayland Drive, Perimeter Center, 2nd Floor Conference Center, Richmond, VA

Public Comment Deadline: October 25, 2013.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system and § 54.1-2957.14 of the Code of Virginia, which authorizes the board, along with the Advisory Board on Polysomnographic Technology, to regulate the profession of polysomnographic technologists.

Purpose: The goal of this action is to comply with the provisions of Chapter 838 of the 2010 Acts of Assembly for licensure of polysomnographers. The Board of Health Professions undertook a review of the need to regulate the profession resulting in a report recommending licensure. Applying established criteria for studying the need to regulate a profession, the Board of Health Professions concluded the following in its 2010 report:

1. The field of sleep medicine is a rapidly emerging discipline within medicine. In the past two decades, sleep medicine has grown from an obscure, multidisciplinary field pursued by neurologists, otolaryngologists, chest physicians, cardiothoracic physicians, psychiatrists, and other specialists to a recognized subspecialty. The American Medical Association recognized sleep medicine as a self-designated practice specialty in 1995, and in 2006 the American Board of Medical Specialties began certifying Sleep Medicine subspecialists in Family Medicine, Internal Medicine, Pediatrics, Otolaryngology, Psychiatry, and Neurology. The field of polysomnography (sleep medicine technology) has grown alongside sleep medicine. The Registered Polysomnographic Technologist (RPSGT) certification provides a nationally recognized credential for persons performing polysomnography. This credential is considered the gold-standard of credentials for sleep technicians by the American Academy of Sleep Medicine. The Board of Registered Polysomnographic Technologists (BRPT) registered eight polysomnographers in 1979. Today, there are over 13,000 registered polysomnographers.

2. Several professions perform polysomnography. In keeping with the history of sleep medicine, personnel with diverse backgrounds developed expertise in sleep medicine technology (polysomnography) including electroneurodiagnosticians, pulmonary function technologists, respiratory therapists, registered nurses, and polysomnographic technologists. Due to the variety of practitioners performing polysomnograms, it is difficult to

estimate the number of persons performing polysomnography. Allowing for a great degree of uncertainty, staff roughly estimates that there may be up to 1,000 persons performing polysomnograms in Virginia. As of July 6, 2009, the BRPT website listed 293 RPSGTs with Virginia addresses.

3. Polysomnography is performed in diverse settings. As sleep medicine has developed, its practice has expanded from research facilities into hospitals and recently into independent diagnostic testing facilities. These facilities may be accredited by the American Academy of Sleep Medicine or the Joint Commission. Many advertised sleep clinics are not accredited. While performing a brief Internet search, staff identified 132 advertised sleep centers with independent addresses. Only 58 of these were accredited or associated with accredited facilities. Polysomnograms are usually performed at night. The delegating physician is usually only available by telephone contact.

4. Polysomnography shares only a few modalities with respiratory therapy; however, respiratory-related conditions account for the greater majority of diagnoses and treatment. Polysomnograms measure a minimum of 11 parameters, but often include many more. Only a few of these may be related to respiration, including oximetry, airflow, or capnography. Other measurements include eye movement, muscle movement, and brainwave measurements. Over 80 sleep disorders have been identified. Only a few of these are related to respiration, including sleep-related apneas. Other disorders include narcolepsy, restless leg syndrome, REM sleep behavior disorder, and insomnia. One study, supported by anecdotal evidence, suggests that up to 95% of conditions diagnosed at sleep centers are respiratory sleep disorders, predominately sleep apnea. Polysomnographers treat these disorders using respiratory care-related modalities, specifically positive airway pressure or low flow supplemental oxygen. Polysomnographers often implement these interventions following preliminary diagnoses made by the polysomnographer in prescribed split-night studies.

5. The unlicensed practice of polysomnography poses a risk of harm to patients. Several factors contribute to the risk of harm: (i) the Commonwealth of Virginia has previously determined that the unlicensed practice of respiratory care poses a risk of harm to consumers; (ii) patients are often alone with polysomnographers, and, as these patients are often asleep, are vulnerable to incompetence, negligence, or malfeasance on the part of polysomnographers; (iii) physicians rely on proper diagnostic tests performed by polysomnographers to diagnose sleep disorders, and improper testing may lead to improper diagnoses, diminishing the health and well-being of patients and possibly leading to further injury or death due to fatigue-related accidents that may also pose a risk to others; and (iv) in the form of prescribed split-night studies, physicians delegate the task of preliminary diagnoses and preliminary treatment of sleep apnea in high probability cases to polysomnographers.

In order to address the risk of harm to patients, regulations prescribe qualifications for minimal competency and standards for appropriate oversight of professional practice to protect the health and safety of patients being treated by polysomnographers.

Substance: Regulations specify (i) qualifications for licensure, including completion of an educational program and certification examination, (ii) criteria for license renewal and continued competency, (iii) requirements for supervision and professional practice, and (iv) fees for obtaining and maintaining licensure.

Issues: The primary advantage to the public is an expansion of physician extenders through the licensure and practice of polysomnographic technologists. Licensure will offer assurance of consistent education, training and minimum competency, and oversight by the Board of Medicine. There is no restriction on the current scope of practice of respiratory care practitioners, but there is an opportunity for a new profession with appropriate education and training. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth. The number of licensees is expected to be relatively small, and the disciplinary caseload expected to be minimal. Since these licensees will be regulated under the Board of Medicine and the Advisory Board on Polysomnographic Technology and will be licensed and disciplined with existing staff, there are few additional administrative costs for licensure.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As mandated by Chapter 838 of the 2010 Acts of the Assembly, the Board of Medicine (Board) proposes to promulgate new regulations that will govern the licensure of individuals who, under the direction of a licensed physician, monitor, test and treat those suffering from sleep disorders. Physicians and respiratory care professionals who are already licensed by the Board and whose scope of practice already includes the field of sleep medicine will not have to be separately licensed as polysomnographic technologists.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact. Prior to General Assembly action in 2010, there was no requirement that individuals who worked as technicians in sleep disorder clinics be licensed. Pursuant to this legislative mandate, the Board now proposes to promulgate new regulations that will govern the licensure of polysomnographic technologists. Individuals seeking licensure will have to complete a licensure application, pay the $130 application fee and submit both verification of completion of a Board acceptable credential and documentation of current certification in Basic Cardiac Life Support. The Board currently proposes to accept as acceptable credentials, 1) current certification as a Registered

Polysomnographic Technologist from the Board of Registered Polysomnographic Technologists, 2) documentation of the Sleep Disorders Specialist credential from the National Board of Respiratory Care or 3) any other Board approved professional certification from an organization or entity which is a member of the National Organization of Competency Assurance.

After initial licensure, polysomnographic technologists will have to renew their active licenses every two years ($135 fee) at which time they will have to attest to having current certification in Basic Cardiac Life Support and to completing 20 hours of acceptable continuing education. Licensees who are late renewing their licenses but who renew within one additional renewal cycle (two years) will have to pay an additional $50 late renewal fee. Licensees who are more than two years late for renewal will have to pay a $180 reinstatement fee, which must be submitted with an application for reinstatement. Individuals who seek to reinstate a license after revocation will have to pay a fee of $2,000. Licensees who do not plan on practicing for a period of time will have the option of converting their license to inactive status and would have to pay only $70 biennially for renewal.

In addition to the fees listed above, individuals who seek to be licensed by the Board in this field will incur costs for required credentials. Currently the Board of Registered Polysomnographic Technologists has four paths to certification which range from completing 18 months of on-the-job training, completing an online 15 module self study course (this costs approximately $500) and passage of the RPSGT exam ($350 fee for exam and review of credentials) to graduation from a Commission on Accreditation of Allied Health Education Programs (CAAHEP) approved course of study (costs for this path would likely be at least several thousand dollars) and passage of the RPSGT exam. Although the Board will allow documentation of the Sleep Disorders Specialist credential from the National Board of Respiratory Care to count as a verification of competency for licensure, only individuals who already have a degree and licensure in respiratory care would be able to get this credential. Individuals who are already licensed as respiratory care professionals in the Commonwealth will not also be required to be licensed as polysomnographic technologists. Licensees will also incur costs for completing continuing education (fees for courses or seminars, possible travel expenses and the value of time spent completing the continuing education hours). There is insufficient information to ascertain whether the benefits that may accrue to the public in the form of increased safety or competency that may arise because of licensure will outweigh these costs.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports the number of individuals that will be affected by these proposed regulations is unknown. In 2010, 293 individuals holding Registered Polysomnographic Technologists certification had Virginia mailing addresses but some of these are likely respiratory care professionals who would not need to obtain further licensure. Additionally, there are other individuals who do not currently hold any licensure who would need to be licensed to continue working in this field. DHP estimates that fewer than 300 people in the Commonwealth would qualify for licensure without further training and certification.

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

Projected Impact on Employment. This proposed regulatory action is likely to cut the number of individuals who are eligible to work as technicians for hospitals and sleep disorder clinics.

Effects on the Use and Value of Private Property. These proposed regulatory changes may drive up the costs of acquiring sleep disorder technician services and, therefore, drive up the costs of running sleep disorder clinics.

Small Businesses: Costs and Other Effects. DHP reports that few or no small businesses will be affected by these proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No DHP reports that few or no small businesses will be affected by these proposed regulations.

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 Board he economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). 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 Board of Medicine concurs with the economic impact analysis on 18VAC85-140, proposed regulations for the licensure of polysomnographic technologists.

Summary:

As required by Chapter 838 of the 2010 Acts of Assembly, the Board of Medicine proposes regulations governing the licensure of individuals who, under the direction of a licensed physician, monitor, test, and treat those suffering from sleep disorders. The proposed regulations establish requirements for minimal competency for practice and continued competency for renewal of licensure, supervisory responsibilities, and standards of conduct for safe practice of polysomnographic technologists.

CHAPTER 140
REGULATIONS GOVERNING THE PRACTICE OF POLYSOMNOGRAPHIC TECHNOLOGISTS

Part I
General Provisions

18VAC85-140-10. Definitions.

A. The following word and term when used in this chapter shall have the meaning ascribed to it in § 54.1-2900 of the Code of Virginia:

"Board"

B. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.15 of the Code of Virginia:

"Polysomnographic technology"

"Practice of polysomnographic technology"

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

"Active practice" means a minimum of 160 hours of professional practice as a polysomnographic technologist within the 24-month period immediately preceding application for reinstatement or reactivation of licensure. The active practice of polysomnographic technology may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board on Polysomnographic Technology to the Board of Medicine as specified in § 54.1-2957.14 of the Code of Virginia.

18VAC85-140-20. Public participation.

A separate board regulation, 18VAC85-11, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-140-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-140-40. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be $130.

2. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

Part II
Requirements for Licensure as a Polysomnographic Technologist

18VAC85-140-50. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-140-40.

2. Verification of a professional credential in polysomnographic technology as required in 18VAC85-140-60.

3. Verification of practice as required on the application form.

4. If licensed or certified in any other jurisdiction, documentation of any disciplinary action taken or pending in that jurisdiction.

18VAC85-140-60. Licensure requirements.

A. An applicant for a license to practice as a polysomnographic technologist shall provide documentation of one of the following:

1. Current certification as a Registered Polysomnographic Technologist (RPSGT) by the Board of Registered Polysomnographic Technologists;

2. Documentation of the Sleep Disorders Specialist credential from the National Board of Respiratory Care (NBRC-SDS); or

3. A professional certification or credential approved by the board from an organization or entity that is a member of the National Organization for Competency Assurance.

B. An applicant for licensure shall provide documentation of current certification in Basic Cardiac Life Support with a hands-on practice training evaluation segment.

Part III
Renewal and Reinstatement

18VAC85-140-70. Renewal of license.

A. Every licensed polysomnographic technologist who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:

1. Submit the prescribed renewal fee;

2. Attest to having current certification in Basic Cardiac Life Support (BCLS) with hands-on practice training evaluation segment; and

3. Attest to having met the continuing education requirements of 18VAC85-140-100.

B. The license of a polysomnographic technologist is lapsed if the license has not been renewed by the first day of the month following the month in which renewal is required. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee and a late fee as prescribed in 18VAC85-140-40 and attestation of compliance with continuing education requirements and current BCLS certification.

18VAC85-140-80. Inactive license.

A licensed polysomnographic technologist who holds a current, unrestricted license in Virginia shall, upon a request at the time of renewal and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice polysomnographic technology in Virginia.

18VAC85-140-90. Reactivation or reinstatement.

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a polysomnographic technologist shall submit an attestation of current certification in Basic Cardiac Life Support (BCLS) with hands-on practice training evaluation segment and evidence of competency to return to active practice to include one of the following:

1. Information on continued active practice in another jurisdiction during the period in which the license has been inactive or lapsed;

2. Attestation of at least 10 hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed three years; or

3. Recertification by passage of an examination for the Registered Polysomnographic Technologist (RPSGT), the Sleep Disorders Specialist credential from the National Board of Respiratory Care (NBRC-SDS), or other credential approved by the board for initial licensure.

B. To reactivate an inactive license, a polysomnographic technologist shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license that has been lapsed for more than two years, a polysomnographic technologist shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-140-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience, or reexamination.

D. A polysomnographic technologist whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board, and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-140-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement 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.

18VAC85-140-100. Continuing education requirements.

A. In order to renew an active license as a polysomnographic technologist, a licensee shall attest to having successfully completed 20 hours of continuing education in courses directly related to the practice of polysomnographic technology as approved and documented by a provider recognized by one of the following:

1. The Board of Registered Polysomnographic Technologists Education Advisory Board (BRPT-EAC);

2. The American Academy of Sleep Medicine (AASM);

3. The American Medical Association for Category 1 continuing medical education credit;

4. The American Association of Sleep Technologists (AAST);

5. The American Society of Electroneurodiagnostic Technologists, Inc. (ASET);

6. The American Association for Respiratory Care (AARC);

7. The American Nurses Association (ANA); or

8. The American College of Chest Physicians (ACCP).

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain the completed form with all supporting documentation in his records for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV
Scope of Practice

18VAC85-140-110. General responsibility.

A polysomnographic technologist shall engage in the practice of polysomnographic technology, as defined in § 54.1-2957.15 of the Code of Virginia, upon receipt of written or verbal orders from a qualified practitioner and under qualified medical direction. The practice of polysomnographic technology may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

18VAC85-140-120. Supervisory responsibilities.

A. A polysomnographic technologist shall be responsible for supervision of unlicensed polysomnographic personnel who work under his direction and shall be ultimately responsible and accountable for patient care and outcomes under his clinical supervision.

B. Delegation to unlicensed polysomnographic personnel shall:

1. Not include delegation of the discretionary aspects of the initial assessment, evaluation, or development of a treatment plan for a patient nor shall it include any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed polysomnographic technologist.

2. Only be made if, in the judgment of the polysomnographic technologist, the task or procedures do not require the exercise of professional judgment, can be properly and safely performed by appropriately trained unlicensed personnel, and the delegation does not jeopardize the health or safety of the patient.

3. Be communicated on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

C. 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 unlicensed personnel, and the type and requirements of the practice setting.

D. The polysomnographic technologist providing clinical supervision shall routinely meet with any unlicensed personnel to review and evaluate patient care and treatment.

E. The polysomnographic technologist shall review notes on patient care entered by unlicensed personnel prior to reporting study results to the supervising physician and shall, by some method, document in a patient record that such a review has occurred.

Part V
Standards of Professional Conduct

18VAC85-140-130. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-140-140. Patient records.

A. A practitioner shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. A practitioner shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. A practitioner shall properly manage and keep timely, accurate, legible, and complete patient records.

D. A practitioner who is employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. A practitioner who is self-employed or employed by an entity in which the individual practitioner owns and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child, including immunizations, shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

3. When closing, selling, or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

18VAC85-140-150. Practitioner-patient communication; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a medication, treatment, or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. Before an invasive procedure is performed, informed consent shall be obtained from the patient in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner practicing polysomnographic technology in Virginia would tell a patient.

a. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

b. An exception to the requirement for consent prior to performance of an invasive procedure may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

c. For the purposes of this provision, "invasive procedure" means any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care and for which the usual practice within the health care entity is to document specific informed consent from the patient or surrogate decision maker prior to proceeding.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner-patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-140-160. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner-patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-140-170. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.

"Remuneration" means compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320 a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-140-180. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, "sexual contact" includes but is not limited to sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs within the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the practitioner-patient relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient neither changes the nature of the conduct nor negates the statutory prohibition.

C. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, "key third party of a patient" means spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC85-140-190. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC85-140)

Instructions for Completing an Application to Practice Polysomnographic Technology in Virginia (undated)

Form A, Claims History (rev. 08/13)

Form B, Employment Activity (rev. 08/13)

Form C, Verification Form (rev. 08/13)

VA.R. Doc. No. R11-2762; Filed July 24, 2013, 10:25 a.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Pharmacy will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-500).**

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

Effective Date: September 25, 2013.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments conform the requirement for administration of drugs by emergency medical services (EMS) personnel to Chapter 191 of the 2013 Acts of the Assembly. Since EMS personnel are allowed to administer drugs and devices in accordance with oral or written orders or by standing protocol, the regulatory requirement for a medical practitioner to sign the administration record upon receiving the patient is not consistent with the statutory language and is deleted.

18VAC110-20-500. Licensed emergency medical services agencies program.

The pharmacy may prepare a drug kit for a licensed emergency medical services agency provided:

1. The PIC of the hospital pharmacy shall be responsible for all prescription drugs contained in this drug kit. A pharmacist shall check each drug kit after filling the kit, and initial the filling record certifying the accuracy and integrity of the contents of the kit.

2. The drug kit is sealed in such a manner that it will deter theft or loss of drugs and aid in detection of such.

3. Drugs may be administered by an emergency medical technician upon an oral ~~order~~ or written ~~standing~~ order or standing protocol of an authorized medical practitioner in accordance with § 54.1-3408 of the Code of Virginia. Oral

orders shall be reduced to writing by the technician and shall be signed by a medical practitioner. Written standing ~~orders~~ protocols shall be signed by the operational medical director for the emergency medical services agency. The emergency medical technician shall make a record of all drugs administered to a patient. ~~This administration record shall be signed by the medical practitioner who assumes responsibility for the patient at the hospital. If the patient is not transported to the hospital or if the attending medical practitioner at the hospital refuses to sign the record, a copy of this record shall be signed and placed in delivery to the hospital pharmacy who was responsible for that kit exchange by the agency's operational medical director within seven days of the administration.~~

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. The record of the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year.

5. The record of the drugs administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations for a period of not less than two years.

6. Intravenous solutions provided by a hospital pharmacy to an emergency medical services agency may be stored separately outside the drug kit.

VA.R. Doc. No. R13-3782; Filed August 5, 2013, 3:21 p.m.

REAL ESTATE APPRAISER BOARD

Proposed Regulation

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-20, 18VAC130-20-30, 18VAC130-20-60, 18VAC130-20-160, 18VAC130-20-180, 18VAC130-20-190).**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public Hearing Information:

September 24, 2013 - 9 a.m. - 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA

Public Comment Deadline: October 25, 2013.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Basis: Title 11 of the federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 (12 USC § 3331 et seq.) established the Appraisal Subcommittee (ASC), which monitors the appraisal licensing and regulatory requirements established by states and their state appraiser boards. The ASC also monitors the practices, procedures, and activities of, among other agencies, the Appraisal Standards Board (ASB) and the Appraisal Practices Board (APB). The ASB promulgates the Uniform Standards of Professional Appraisal Practice (USPAP) that are incorporated into the board's regulations and must be followed by all Virginia licensed appraisers. The APB identifies and issues opinions on recognized valuation methods and techniques within the appraisal profession.

Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Section 54.1-2013 of the Code of Virginia provides that the Real Estate Appraiser Board may do all things necessary and convenient for carrying into effect the provisions of Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of FIRREA as well as promulgating necessary regulations.

Purpose: The proposed amendments are necessary to make clarifying changes and to ensure the regulations conform to the current statutes, standards of practice in the industry, and changes in the work environment to protect the public health, safety, and welfare.

Substance: The proposed amendments make clarifying changes, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes as follows:

1. 18VAC130-20-10 - amend the definitions of "certified residential appraiser" and "licensed residential appraiser" to include market value in the definition of transaction value. This should help prevent licensees from appraising property outside the limit of their license class.

2. 18VAC130-20-20 - require (i) business entities providing appraisal services in Virginia to register with the board and (ii) a board licensee to serve as the contact person for a registered business entity providing appraisal services.

3. 18VAC130-20-30 - require (i) certified general appraiser applicants demonstrate adequate experience in the use of the income approach and (ii) appraiser license applicants have recent experience in performing appraisal reports.

4. 18VAC130-20-60 - (i) require an applicant be 18 years of age and (ii) allow a licensing hearing to be held before the board.

5. 18VAC130-20-160 - update the reference to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6. 18VAC130-20-180 - (i) add a standard for each of the five Uniform Standards of Professional Appraisal Practice rules and (ii) replace the term "unworthiness" with "prohibited acts."

7. 18VAC130-20-190 - allow the board to more efficiently take disciplinary action against a certified appraisal instructor,

who also holds an appraiser license and has been the subject of disciplinary action.

Issues: The board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies, by prescribing standards of conduct and practice, and by imposing penalties for not complying with the regulations. The proposed amendments provide clarification and guidance to licensees so they can better serve the public and comply with industry standards and changes in the work environment. The proposed amendments pose no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Real Estate Appraiser Board (Board) proposes amendments to its regulations that 1) clarify the assessment value limitations for each category of certification or licensure, 2) specify that experience in real estate appraisal cited when applying for licensure must be accrued within five years of licensure application and 3) add a list of prohibited acts for certified real estate appraiser instructors.

Result of Analysis. Benefits likely outweigh costs for two of these proposed changes. There is insufficient information to accurately gauge whether benefits are likely to outweigh costs for one of these proposed changes.

Estimated Economic Impact. Under current regulations, certified residential real estate appraisers are allowed to appraise nonresidential properties with a transaction value of up to $250,000. Licensed residential real estate appraisers are allowed to appraise residential properties that comprise four or fewer residential units with a transaction value of less than $1,000,000 and are also allowed to appraise nonresidential properties with a transaction value of up to $250,000. The Board proposes to add language that specifies the lesser value of either the transaction value or market value should be used to meet the dollar value limitations set for licensure or certification. Board staff reports that market value can vary widely away from transaction value and the Board wishes to make certain licensees and certificate holders know what limitations they are expected to hold to. Individuals who are subject to the Board's authority will likely benefit from the clarity that this additional language brings to these regulations.

Currently, individuals who wish to be licensed or certified by the Board must meet certain experience requirements before they can apply for a license or certificate. The Board proposes to add language requiring that qualifying experience be accrued within five years of application for licensure or certification. This proposed requirement may offer some benefit to the public if appraiser practice changes quickly. However, applicants are also required to take an exam presumably to ensure proficiency in current practice. Given that applicants do have to pass an exam, putting limitations on when they have gained their experience may be unnecessarily burdensome. There is insufficient information to ascertain whether benefits will outweigh costs for this proposed change.

Current regulations have a list of prohibited acts that are grounds for disciplinary action against licensed or certified residential real estate appraisers but do not contain grounds for disciplinary actions against offending instructors that are certified by the Board. As a consequence, instructors may be denied renewal of certification but may not be disciplined or kept from legally offering instruction between initial certification and renewal or between renewal periods. The Board now proposes to add a list of prohibited acts that include being convicted of a misdemeanor involving moral turpitude or any felony once any appeal window has closed or having a license or certificate to practice real estate appraisal surrendered, suspended or revoked on account of disciplinary action. This change will likely benefit the public and, more specifically, benefit individuals who are being instructed in real estate appraisal practice by limiting the ability of bad actors to continue being instructors in this field. These benefits likely outweigh the costs to instructors who will likely lose income when they are forced to stop offering instruction more quickly than current regulations allow.

Businesses and Entities Affected. Board staff reports that the Board currently regulates 4,243 real estate appraisers and instructors.

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

Projected Impact on Employment. These proposed regulations are unlikely to significantly affect employment in Board regulated professions.

Effects on the Use and Value of Private Property. These regulations are unlikely to affect the use or value or private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Board staff reports that most of the entities regulated by the Board likely qualify as small businesses. Affected small businesses are unlikely to incur extra costs on account of these proposed changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Affected small businesses are unlikely to incur extra costs on account of these proposed changes.

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 14 (10). 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 Real Estate Appraiser Board concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments make clarifying changes, ensure consistency with state and federal law, and ensure compliance with current industry standards by (i) clarifying the assessment value limitations for each category of certification or licensure, (ii) requiring real estate appraisal business entities register with the board and designate a board contact person, (iii) requiring an applicant be at least 18 years of age, (iii) allowing a licensing hearing to be held before the board, (iv) specifying that experience in real estate appraisal cited when applying for licensure must be accrued within five years of licensure application and include use of the income approach, (v) adding a list of prohibited acts for certified real estate appraiser instructors, and (vi) updating citations.

Part I
General

18VAC130-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to $250,000, whichever is the lesser.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes

time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

Absorption Study
Ad Valorem Tax Study
Annexation Study
Assemblage Study
Assessment Study
Condominium Conversion Study
Cost-Benefit Study

Cross Impact Study
Depreciation/Cost Study
Distressed Property Study
Economic Base Analysis
Economic Impact Study
Economic Structure Analysis
Eminent Domain Study
Feasibility Study
Highest and Best Use Study
Impact Zone Study
Investment Analysis Study
Investment Strategy Study
Land Development Study
Land Suitability Study
Land Use Study
Location Analysis Study
Market Analysis Study
Market Strategy Study
Market Turning Point Analysis
Marketability Study
Portfolio Study
Rehabilitation Study
Remodeling Study
Rental Market Study
Right of Way Study
Site Analysis Study
Utilization Study
Urban Renewal Study
Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice is less than $1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to $250,000, whichever is the lesser.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, 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.

"Substantially equivalent" is any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser or certified residential real estate appraiser who supervises any unlicensed person

acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

Part II
Entry

18VAC130-20-20. Requirement for registration.

~~A~~ All business ~~entity seeking to provide~~ entities, both domestic (in-state) and foreign (out-of-state), providing appraisal services shall register with the board by completing an application furnished by the board describing the location, nature, and operation of ~~its practice~~ their practices, and the name and address of the registered agent, an associate, or a partner of the business entity. Along with a completed application form, domestic corporations and limited liability companies shall provide a copy of the ~~Certificate of Incorporation~~ certificate as issued by the State Corporation Commission~~,~~; foreign (out-of-state) corporations and limited liability companies shall provide a copy of the ~~Certificate of Authority~~ certificate from the State Corporation Commission~~,~~; partnerships shall provide a copy of the certified Partnership Certificate~~,~~; and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted. Every business entity providing appraisal services shall provide the name and license number of a board licensee who shall serve as the contact person for the board.

18VAC130-20-30. General qualifications for licensure.

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.

3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision, by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.

6. The applicant shall be at least 18 years old.

7. The applicant shall have successfully completed 150 hours for the licensed residential classification, 200 hours for the certified residential classification, and 300 hours for the certified general classification, of approved real estate appraisal courses, including the 15-hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified residential real estate appraiser is an associate degree or higher. In lieu of the required degree, 21 semester credit hours covering the

following subject matter courses: English Composition; Principles of Economics (Micro or Macro); Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers -- Word Processing/Spreadsheets; and Business or Real Estate Law. The required core curriculum for the certified general real estate appraiser is a bachelor's degree or higher. In lieu of the required degree, 30 semester credit hours covering the following subject matter courses: English Composition; Micro Economics; Macro Economics; Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers -- Word Processing/Spreadsheets; Business or Real Estate Law; and two elective courses in accounting; geography; ag-economics; business management; or real estate. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be acquired within the five-year period immediately preceding the date application is made and be supported by adequate written reports or file memoranda ~~which~~ that shall be made available to the board upon request.

a. Applicants for a licensed residential real estate appraiser license shall have a minimum of 2,000 hours appraisal experience, in no fewer than 12 months. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Applicants for a certified residential real estate appraiser license shall have a minimum of 2,500 hours of appraisal experience obtained during no fewer than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2,500 hours of appraisal experience.

c. Applicants for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments which demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties which do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser which include the use of the income approach. The applicant must have substantially contributed to the development of the income approach in such reports and shall provide evidence or verification of such contribution.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

18VAC130-20-60. Qualifications for licensure as an appraiser trainee.

An applicant for licensure as an appraiser trainee shall meet the following educational, experience, and examination requirements in addition to those set forth in subdivisions 1 through ~~5~~ 6 and ~~9~~ 10 of 18VAC130-20-30.

1. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

2. Within the five-year period immediately preceding application for licensure, the applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include the 15-hour National Uniform Standards of Professional Appraisal Practice course.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers are described in this subdivision.

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be ~~state~~

~~certified~~ in good standing and not subject to any disciplinary action within the last two years that affects the supervising appraiser's legal eligibility to engage in appraisal practice.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

c. The appraiser trainee is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three trainees, at one time, unless a state program in the licensing jurisdiction provides for progress monitoring, supervising certified appraiser qualifications, and supervision and oversight requirements for supervising appraisers.

Part IV
Standards

18VAC130-20-160. Grounds for disciplinary action.

The board has the power to fine any licensee, registrant or certificate holder, to place any licensee, registrant or certificate holder on probation, and to suspend or revoke any license, registration or certification issued under the provisions of Chapter 20.1 of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with §§ 54.1-201(7), 54.1-202 and the provisions of the Administrative Process Act, Chapter ~~1.1:1~~ 40 (§ 2.2-4000 et seq.) of Title ~~9~~ 2.2 of the Code of Virginia, when any licensee, registrant or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapter 20.1 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board. An appraiser trainee shall be subject to disciplinary action for his actions even if acting under the supervision of a supervising appraiser.

18VAC130-20-180. Standards of professional practice.

A. The provisions of subsections C through ~~J~~ L of this section shall not apply to local, state and federal employees performing in their official capacity.

B. Maintenance of licenses. The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.

1. Change of address.

a. All licensed real estate appraisers, appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change.

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their current business address and shall report any change of address to the board within 30 days of such change.

2. Change of name.

a. All real estate appraisers, appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal business entities shall promptly notify the board of any change of name or change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.

4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.

5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.

7. All appraiser licenses issued by the board shall be visibly displayed.

C. Use of signature and electronic transmission of report.

1. The signing of an appraisal report or the transmittal of a report electronically shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall sign or

electronically transmit an appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with § 54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be signed by the licensed appraiser. For narrative and letter appraisals, the signature and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter. Appraisal reports may be transmitted electronically. Reports prepared without the use of a seal shall contain the license number of the appraiser.

a. An appraiser may provide market analysis studies or consulting reports, which do not constitute appraisals of market value, provided such reports, studies, or evaluations shall contain a conspicuous statement that such reports, studies, or ~~valuations~~ evaluations are not an appraisal as defined in § 54.1-2009 of the Code of Virginia.

b. Application of the seal and signature or electronic transmission of the report indicates acceptance of responsibility for work shown thereon.

c. The seal shall conform in detail and size to the design illustrated below:

*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

D. Development of appraisal. In developing a real property appraisal, all licensees shall comply with the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) in the edition in effect at the time of the reports' preparation. If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."

E. Appraisal report requirements. In reporting a real property appraisal, a licensee shall meet the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

F. Reviewing an appraisal. In performing a review appraisal, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

G. Mass appraisals. In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

H. Recordkeeping requirements.

1. A licensee shall abide by the Record Keeping Rule as stated in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

2. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents within 10 working days of the request, any document, book, record, work file or electronic record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection by the board or its agents. The board or any of its agents may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

~~2.~~ 3. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

~~3.~~ 4. The appraiser trainee shall be entitled to obtain copies of appraisal reports he prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

I. Disclosure requirements. A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this chapter, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

J. Competency. A licensee shall abide by the Competency Rule as stated in the Uniform Standards of Professional

Appraisal Practice in the edition in effect at the time of the reports' preparation.

K. Scope of work. A licensee shall abide by the Scope of Work Rule as stated in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

L. Jurisdictional exception. A licensee shall abide by the Jurisdictional Exception Rule as stated in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

~~K. Unworthiness~~ M. Prohibited acts.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, § 36-96.1 et seq. of the Code of Virginia.

7. A licensee shall respond to an inquiry by the board or its agents, other than requested under ~~18VAC130-20-180~~ subdivision H ~~1~~ 2 of this section, within 21 days.

8. A licensee shall not provide false, misleading or incomplete information in the investigation of a complaint filed with the board.

18VAC130-20-190. Standards of conduct for certified appraiser education instructors.

A. Instructors shall develop a record for each student which shall include the student's name and address, the course name, the course hours and dates given, and the date the course was passed. This record shall be retained by the course provider.

B. The instructor shall not solicit information from any person for the purpose of discovering past licensing examination questions or questions which may be used in future licensing examinations.

C. The instructor shall not distribute to any person copies of license examination questions, or otherwise communicate to any person license examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

D. The instructor shall not, through an agent or otherwise, advertise its services in a fraudulent, deceptive or misrepresentative manner.

E. Instructors shall not take any appraiser licensing examination for any purpose other than to obtain a license as a real estate appraiser.

F. Prohibited acts.

1. The instructor shall act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public and shall not engage in improper, fraudulent, or dishonest conduct.

2. The instructor may not have been convicted, found guilty, or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. The instructor shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. The instructor may not have had a license or certification as a real estate appraiser that has been (i) suspended, revoked, or surrendered in connection with a disciplinary action or (ii) the subject of discipline in any jurisdiction.

5. The instructor shall inform the board in writing within 30 days of the suspension, revocation, or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any

appraiser license or certification that has been the subject of discipline in any jurisdiction.

6. The instructor, who is also a licensed appraiser, shall perform all appraisals in accordance with Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).

7. The instructor shall respond to an inquiry by the board or its agents within 21 days.

8. The instructor shall not provide false, misleading, or incomplete information in the investigation of a complaint filed with the board.

VA.R. Doc. No. R12-3192; Filed July 29, 2013, 4:50 p.m.

BOARD OF SOCIAL WORK

Final Regulation

REGISTRAR'S NOTICE: The Board of Social Work is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Social Work will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-40, 18VAC140-20-49).**

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

Effective Date: September 25, 2013.

Agency Contact: Catherine Chappell, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@dhp.virginia.gov.

Summary:

The amendments conform the regulation to Chapter 533 of the 2013 Acts of Assembly by (i) amending the definition of "clinical course of study" and (ii) specifying the evidence required to document completion of an educational program to qualify an applicant for licensure as a clinical social worker.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Clinical course of study" means graduate course work ~~which~~ that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology, and diversity issues; research~~,~~; clinical practice with individuals, families, and groups; and a clinical practicum ~~which~~ that focuses on diagnostic, prevention, and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

Part II
Requirements for Licensure

18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.

2. Submit in one package to the board office:

a. A completed notarized application;

b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;

c. The application fee prescribed in 18VAC140-20-30;

d. Official transcript or ~~transcripts in the original sealed envelope~~ documentation submitted from the appropriate institutions of higher education ~~directly to the applicant~~ that verifies successful completion of educational requirements set forth in 18VAC140-20-49 for licensure as a clinical social worker; and

e. Documentation of applicant's out-of-state licensure where applicable.

3. Provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing clinical social work services in an exempt setting for at least 360 hours per year for two of the past five years.

18VAC140-20-49. Educational requirements for a licensed clinical social worker.

A. The applicant for licensure as a clinical social worker shall ~~be a graduate of a Master or Doctor of Social Work Program in a clinical course of study. An applicant with a nonclinical concentration shall complete additional graduate level academic course work and field placement/practicum to meet all requirements for a clinical course of study~~ document successful completion of one of the following: (i) a master's degree in social work with a clinical course of study from a program accredited by the Council on Social Work Education, (ii) a master's degree in social work with a nonclinical concentration from a program accredited by the Council on Social Work Education together with successful completion of the educational requirements for a clinical course of study through a graduate program accredited by the Council on Social Work Education, or (iii) a program of education and training in social work at an educational institution outside the United States recognized by the Council on Social Work Education.

~~B. The minimum course requirements for a clinical course of study shall include graduate level courses consisting of:~~

~~1. Twelve credit hours of explanatory theory;~~

~~2. Twelve credit hours of practice theory;~~

~~3. Three credit hours of psychopathology including assessment, diagnosis, and treatment;~~

~~4. Three credit hours of social work practice research; and~~

~~5. Coursework in diversity issues, social justice, culture, and at risk populations.~~

~~C.~~ B. The requirement for a ~~supervised field placement/practicum in clinical social work services~~ clinical practicum in a clinical course of study shall be a minimum of 600 hours, which shall be integrated with clinical course of study coursework and supervised by a person who is a licensed clinical social worker or who holds a master's or doctor's degree in social work and has a minimum of three years of experience in clinical social work services after earning the graduate degree. An applicant who has otherwise met the requirements for a clinical course of study but who did not have a minimum of 600 hours in a supervised field placement/practicum in clinical social work services may meet the requirement by obtaining an equivalent number of hours of supervised practice in clinical social work services in addition to the experience required in 18VAC140-20-50.

~~D. Graduates of a bachelor of social work program who earn advanced standing in the masters program shall meet all minimum course requirements for a clinical course of study, except advanced standing students may count up to six hours of explanatory theory and up to six hours of practice theory completed during the bachelor degree program towards meeting the requirements.~~

~~E. A master of social work program shall (i) include foundation course work common for all social work students, (ii) include advanced course work for student specialization, and (iii) be accredited by the Council on Social Work Education. A doctor of social work program shall at a minimum: (i) meet all requirements for the advanced course requirements for a clinical course of study, and (ii) be accredited by the appropriate regional academic accrediting body (e.g., Southern Association of Colleges and Schools).~~

VA.R. Doc. No. R13-3818; Filed August 5, 2013, 3:44 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Fast-Track Regulation

Title of Regulation: **24VAC20-50. Rules and Regulations for Motorcycle Rider Safety Training Center Program (repealing 24VAC20-50-10 through 24VAC20-50-80).**

Statutory Authority: § 46.2-1189 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 25, 2013.

Effective Date: October 11, 2013.

Agency Contact: Barbara S. Klotz, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, Virginia 23269-0001, telephone (804) 367-8171, FAX (804) 367-6631, TTY (800) 272-9268, or email barbara.klotz@dmv.virginia.gov.

Basis: Section 46.2-203 of the Code of Virginia provides the Department of Motor Vehicles (DMV) with general statutory authority for promulgating regulations necessary to carry out the laws administered by the department. Section 46.2-1189 of the Code of Virginia allows DMV to do all things necessary to carry out the purposes of Motorcycle Rider Safety, Article 23 (§ 46.2-1188 et seq.) of Title 46.2 of the Code of Virginia. In both cases, the rulemaking authority is discretionary. The Office of the Attorney General has certified that the agency has the statutory authority to repeal 24VAC20-50 (Rules and Regulations for Motorcycle Rider Safety Training Center Program). It should be noted that the specific rulemaking authority DMV previously had in § 46.2-1189 of the Code of Virginia was removed effective January 1, 2005.

Purpose: The motorcycle rider safety training course is a program of instruction in the operation of motorcycles and the rules of the road. Chapter 734 of the 2004 Acts of Assembly enhanced the overall program and made the current regulations redundant, eliminating the need for these regulations and thereby necessitating their repeal. Chapter 226 of the 2013 Acts of Assembly eliminated any agency discretion that DMV had in implementation of the statutory requirements for the motorcycle rider safety training course program. Repealing these regulations allows DMV to better protect the health, safety, and welfare of the citizens of the Commonwealth, in general, and motorcyclists in particular. Through the use of the statutory requirements for licensing and providing course training, DMV can more easily administer the purpose and applicability of the statutes governing these courses. Likewise, the statutory licensing requirements provide a more appropriate vehicle for overseeing the motorcycle riding courses and course providers. The flexibility and effectiveness of this approach means better course oversight and training. Better course oversight and training translates into safer motorcyclists on the highways of the Commonwealth, which is good for motorcyclists and good for drivers of other types of vehicles. No specific issues should need to be addressed since the repeal of these regulations and the use of the statutory enhancements to the program were endorsed by most, if not all, course providers.

Rationale for Using Fast-Track Process: The fast-track process is being used due to the noncontroversial nature of the proposed repeal action. The regulatory requirements have been incorporated into the Code of Virginia, and recent legislation removes agency discretion.

Substance: There are no new substantive provisions or substantive changes to the regulations because they are being repealed in their entirety.

Issues: There are no real issues associated with the repeal of these regulations because this action will help clarify the statutory changes that became effective on January 1, 2005. The key elements of these regulations were incorporated into statute in 2004, making the regulations unnecessary. It is advantageous to repeal unnecessary regulations to eliminate any possible confusion between the statutes and regulations. There are no disadvantages to the public or the Commonwealth. DMV is seeking the repeal for the following reasons:

1. Chapter 734 of the 2004 Acts of Assembly removed the language in § 46.2-1189 of the Code of Virginia that authorized DMV to promulgate regulations to control the motorcycle rider safety program.

2. DMV wants to repeal the regulations because the General Assembly transitioned the motorcycle rider training program from one in which DMV entered into contracts with training centers to one in which DMV issued licenses to operate training centers.

3. Much of the substance of the regulations is codified as §§ 46.2-1190, 46.2-1190.1, 46.2-1190.2, 46.2-1190.3, and 46.2-1190.4 of the Code of Virginia, leaving the regulations duplicative and sometimes inconsistent with statute. For example, the regulations require a training center to provide a motorcycle for beginner riders that displaces no more than 350 cubic centimeters; the statute institutes a 500 cubic centimeters maximum.

4. Since 2005 the number of training centers has increased from 18 to 36. DMV currently oversees the 36 training centers that train about 16,000 students.

5. As part of the Governor's Regulatory Reform Initiative, DMV proposed legislation removing all requirements for licensure and certification from DMV's discretion. That legislation, Chapter 226 of the 2013 Acts of Assembly, became effective July 1, 2013.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commissioner of the Department of Motor Vehicles (Department) proposes to repeal these regulations.

Result of Analysis. For the most part, the proposed repeal of these regulations will have no significant impact. The repeal of curricula requirements in regulation is: 1) potentially advantageous in that it will enable the Department to more quickly change such requirements when deemed necessary, and 2) potentially disadvantageous in that it would likely involve less public participation in policy formation and less outside analysis that could perhaps detect unintended consequences.

Estimated Economic Impact. Prior to the 2013 General Assembly, the Code of Virginia (Code) gave the Department broad discretion to add additional requirements beyond those specified in the Code. For example, § 46.2-1190 E of the Code of Virginia stated that "Training centers shall ensure that instructors maintain the minimum qualifications and meet any other instructor requirements established in this article or otherwise established by the Department." Chapter 226 of the 2013 Acts of Assembly removed explicit statements indicating that the Department may add additional requirements. Further, most of the provisions of these regulations are also specifically addressed in the Code. Thus, the proposed repeal of these regulations may not have much impact.

One exception concerning discretion for requirements outside of the Code is curricula. The Code specifies that the Department shall approve the curricula used by training centers; and for the most part the Code does not address necessary attributes of the curricula. The current regulations specify approved curricula. For example, for experienced rider training the regulations state that "The curriculum used to train experienced riders shall be the most current version of the Better Biking Program (BBP) developed by the MSF, or DMV-approved equivalent."

Repealing the regulations would remove the specification of approved curricula from the law. The Department keeps the specification of approved curricula in guidance documents that are available to the public. Having curricula requirements in guidance documents rather than regulations is advantageous in one respect, but disadvantageous in another.

If the Department determines that the curricula requirements should be changed, such changes can essentially be implemented immediately when the requirements are in guidance documents but not regulations. If the change in curricula requirements creates a net benefit for the public, the beneficial change can be implemented sooner than if the requirements were in regulation. It takes months to change regulations since the rules of the Administrative Process Act must be followed. On the other hand, following the requirements of the Administrative Process Act does provide value in that it provides for significant public participation and reduces the probability of policy with unintended consequences being implemented due to the increased analysis of the policy change by more interested parties and analysts.

Businesses and Entities Affected. According to the Department, there are 36 motorcycle rider training centers that train about 16,000 students in the Commonwealth.

Localities Particularly Affected. The proposed repeal does not disproportionately affect particular localities.

Projected Impact on Employment. The proposal repeal will most likely not significantly affect employment.

Effects on the Use and Value of Private Property. Initially at least, the proposed repeal is unlikely to significantly affect the use and value of private property. In the long run, the reduced public participation and outside analysis in policy development may result in different and perhaps more frequent changes in curricula requirements for private motorcycle rider safety training centers.

Small Businesses: Costs and Other Effects. Initially at least, the proposed repeal is unlikely to significantly affect small businesses. In the long run, the reduced public participation of small businesses and outside analysis in policy development may result in different and perhaps more frequent changes in curricula requirements for small private motorcycle rider safety training centers.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Retaining the approved curricula in regulation would help assure small businesses ability to participate in curricula policy development.

Real Estate Development Costs. The proposed repeal is unlikely to 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 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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: Section 46.2-1190.1 of the Code of Virginia requires motorcycle training schools to use curricula approved by the Department of Motor Vehicles (DMV). It is not necessary, however, to maintain regulations to specify such approved curricula. No law requires approval via the regulatory process, and DMV already has an official policy and guidance document detailing approved curricula. The approved curricula comply with Code of Virginia requirements.

For motorcycle training, DMV has issued an official policy and guidance document entitled the "Virginia Rider Training Program Policy and Procedures" that may be found on DMV's web page at http://www.dmv.state.va.us/webdoc/pdf/dmv226.pdf. This document provides the approved curricula for the basic rider, experienced rider, and sidecar and three-wheeled rider programs. The current DMV-approved curriculum for basic rider training is the Motorcycle Safety Foundation's Basic Rider Course. The current DMV-approved curriculum for experienced rider training is the Motorcycle Safety Foundation's Experienced Rider Suite. The current DMV-approved curriculum for sidecar and three-wheeled motorcycle rider training is the Evergreen Safety Council's Sidecar/Trike Training Course (basic and advanced).

The analysis of the Department of Planning and Budget (DPB) has expressed concern that there will be little public participation and small business participation in policy development if curricula are removed from the regulations. DMV asserts that this concern is unwarranted. The curricula used by the 36 training centers that DMV currently oversees are curricula that reflect the current motor vehicle safety laws. Anytime motor vehicle safety laws change resulting in a need to incorporate the changes into the curricula, DMV works extensively with stakeholders and law enforcement in determining the need for changes and the impact on the motorcycling community as well as the general public. The motorcycling organizations, the training centers representing small businesses, and all other stakeholders have the opportunity to communicate with DMV as well as participate in the legislative process to express preferences and concerns regarding changes in the motor vehicle safety laws that ultimately are reflected in the motorcycle training curricula. The public and small business participation DPB alludes to occurs during the robust process available to shape the motor vehicle safety laws that the curricula covers. This is part of DMV's continuous commitment to receiving stakeholder input and feedback.

Summary:

Pursuant to Chapter 734 of the 2004 Acts of Assembly and Chapter 226 of the 2013 Acts of Assembly, which statutorily provided for motorcycle training centers, this action repeals 24VAC20-50 (Rules and Regulations for Motorcycle Rider Safety Training Center Program) as part of the Governor's Regulatory Reform Initiative.

VA.R. Doc. No. R13-3685; Filed August 5, 2013, 2:09 p.m.

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 July 29, 2013. 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.

Director's Order Number Sixty-Two (13)

Virginia's Instant Game Lottery 1400 "7-11-21®" Final Rules for Game Operation (effective July 19, 2013)

Director's Order Number Sixty-Three (13)

Virginia Lottery's "Redskins 2013 Live It." Sweepstakes Final Rules for Operation (effective July 29, 2013)

Director's Order Number Sixty-Four (13)

Virginia's Instant Game Lottery 1434 "Redskins 2013 Live It." Final Rules for Game Operation (effective July 29, 2013)

Director's Order Number Sixty-Five (13)

Virginia's Instant Game Lottery 1408 "Safe Cracker" Final Rules for Game Operation (effective July 29, 2013)

Director's Order Number Sixty-Six (13)

Virginia Lottery's "Social Media Sweepstakes/Contest" Final Rules for Operation (effective July 29, 2013)

STATE BOARD OF SOCIAL SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services has conducted a small business impact review of **22VAC40-670, Degree Requirements for Social Work Occupational Group,** and determined that this regulation should be retained in its current form. The State Board of Social Services is publishing its report of findings dated August 15, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The regulation applies to the entrance standards of employees hired and employed by local departments of social services. These standards do not apply to the private sector or small businesses, therefore the standards do not have an impact on small businesses.

Contact Information: Lori Schamerhorn, Associate Director, Senior, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264, FAX (804) 726-7028, or email lori.schamerhorn@dss.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for the City of Hopewell

An enforcement action has been proposed for the City of Hopewell for alleged violations at the Hopewell Wastewater Treatment Facility located at 231 Hummel Ross Road, Hopewell, VA. The State Water Control Board proposes to issue a consent special order to the City of Hopewell to address noncompliance with State Water Control Board Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 24, 2013, to September 25, 2013.

Proposed Consent Special Order for Jerusalem Baptist Church, Trustees

An enforcement action has been proposed for Jerusalem Baptist Church, Trustees for alleged violations at 16210 Shortcut Road, Doswell, VA. The State Water Control Board proposes to issue a consent special order to Jerusalem Baptist Church, Trustees to address noncompliance with State Water Control Board Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 21, 2013, to September 25, 2013.

Proposed Consent Special Order for County of Northumberland

An enforcement action has been proposed for the County of Northumberland for alleged violations that occurred at the County of Northumberland Reedville Sanitary District Wastewater Treatment Plant, Reedville, VA. The State Water Control Board proposes to issue a consent special order to the County of Northumberland to address noncompliance with State Water Control Board Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 21, 2013, to September 25, 2013.

Proposed Consent Order for RL PROP 2011-1 Investments, LLC

An enforcement action has been proposed for RL PROP 2011-1 Investments, LLC for alleged violations at the Windmill Point Resort and Yacht Harbor Wastewater Treatment Plant located at 56 Windjammer Lane, White Stone, VA. The consent order requires corrective action and a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email frank.lupini@deq.virginia.gov, FAX (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 26, 2013, to September 25, 2013.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/connect/commonwealth-calendar.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.