VIRGINIA REGISTER OF REGULATIONS

VOL. 30 ISS. 1 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | SEPTEMBER 9, 2013

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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).

September 2013 through August 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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30:12	January 22, 2014	February 10, 2014
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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.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

DEPARTMENT OF HEALTH

Agency Decision

Title of Regulation: **12VAC5. None specified.**

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health promulgate regulations for the licensure of plastic surgery centers. The petitioner cites from an official advisory opinion issued by the Attorney General dated August 20, 2010, to Delegate Robert Marshall and Senator Ralph Smith. The petitioner quotes the following sections from the official advisory opinion: "To promote "the protection, improvement and preservation of the public health" (VA. CODE ANN. § 32.1-2) the General Assembly has enacted Title 32.1 of the Code of Virginia, which provides in pertinent part for the regulation of medical and health care facilities (See Code of Virginia, Title 32.1, Chapter 5, "Regulation of Medical Care Facilities and Services," §§ 32.1-123 through 32.1-162.15 (2009 & Supp. 2010)). In addition, because "the unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public (VA. CODE ANN. § 54.1-100 (2009)) the Commonwealth further exercises its police power to oversee health professionals "for the exclusive purpose of protecting the public interest." "Virginia law provides that all hospitals in the Commonwealth are to be licensed (Section 32.1-125 (2009)) and directs the State Health Commissioner to issue licenses in accordance with the regulations of the Board and other law. The Code broadly defines "hospital" as "any facility ... in which the primary function is the provision of diagnosis, treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including ... outpatient surgical [hospitals]" (Section 32.1-123 (2009))" The petitioner then states that "Although 'Plastic Surgery Centers' are not specifically mentioned, this definition encompasses facilities in which plastic surgeries are performed."

Agency Decision: Request denied.

Statement of Reason for Decision: The board does not have the statutory authority to regulate "plastic surgery centers" through licensure unless they meet the definition of "hospital." To the extent a "plastic surgery center" meets the definition of a "hospital," it is already regulated under 12VAC5-410, unless it is exempt from licensure under § 32.1-124 of the Code of Virginia. The board does not have statutory authority to regulate entities that do not meet the definition of "hospital" or are exempt from licensure under § 32.1-124 of the Code of Virginia.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-25, Filed August 16, 2013, 8:38 a.m.

Agency Decision

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities.**

Statutory Authority: § 32.1-127 of the Code of Virginia.

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health amend its regulations concerning architectural drawings and specifications requirements for nursing facilities, contained in the Regulations of Licensure of Nursing Facilities (12VAC5-371-410), on the grounds that the regulations conflict with the provisions of § 32.1-127.001 of the Code of Virginia.

Agency Decision: Request granted.

Statement of Reason for Decision: The Virginia Department of Health will file a Notice of Intended Regulatory Action.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-24, Filed August 16, 2013, 8:37 a.m.

Agency Decision

Title of Regulation: **12VAC5-410. Rules and Regulations for the Licensure of Hospitals in Virginia.**

Statutory Authority: § 32.1-123 of the Code of Virginia.

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health amend its regulations concerning general building and physical plant requirements for hospitals, contained in the Regulations of Licensure of Hospitals in Virginia (12VAC5-410-650), on the grounds that the regulations conflict with the provisions of § 32.1-127.001 of the Code of Virginia.

Agency Decision: Request granted.

Statement of Reason for Decision: The Virginia Department of Health will file a Notice of Intended Regulatory Action.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-23, Filed August 16, 2013, 8:36 a.m.

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: Gregory J. Huber.

Nature of Petitioner's Request: To revise requirements for continuing competency for nurses reactivating an inactive license or reinstating an expired license so requirements are not weaker than those for renewal of an active license. To reconsider passage of the National Council Licensing Examination as a method for reactivation/reinstatement.

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 http://www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on September 9, 2013. Comment on the petition from interested parties is requested until October 8, 2013. Following receipt of all comments on the petition, the request to examine continuing competency requirements for persons reactivating or reinstating a license will be considered by the board at its meeting on November 19, 2013.

Public Comment Deadline: October 8, 2013.

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

VA.R. Doc. No. R14-01, Filed August 9, 2013, 1:12 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-40).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: August 21, 2013.

Agency Contact: Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, or email myron.mcclees@sbe.virginia.gov.

Summary:

Chapter 469 of the 2013 Acts of Assembly added a provision that allows an officer of election to cause a machine to accept an optical scan ballot that was rejected due to an undervote or overvote. To conform the regulation to Chapter 469, the amendment provides an exception to the general rule that a ballot may only be cast by a voter or an officer of election who has been specifically directed to do so by the voter.

1VAC20-60-40. When ballot cast.

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter pressing the vote or cast button on a direct recording electronic machine, inserting an optical scan ballot into an electronic counter, or placing a paper ballot in an official ballot container.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an [undervote or] overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the United States Postal Service or other authorized carrier for returning the ballot as required by law.

VA.R. Doc. No. R13-3743; Filed August 21, 2013, 2:11 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Final Regulation

REGISTRAR'S NOTICE: The regulatory action to amend 4VAC25-150, Virginia Gas and Oil Regulation, was (i) published as final regulations in 29:3 VA.R. 355-380 October 8, 2012; (ii) suspended in accordance with § 2.2-4015 A 4 of the Code of Virginia in 29:6 VA.R. 1226 November 19, 2012; and (iii) readopted as final regulation with the changes shown in brackets in the regulatory text.

Title of Regulation: **4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-10, 4VAC25-150-60, 4VAC25-150-80, 4VAC25-150-90, 4VAC25-150-100, 4VAC25-150-110, 4VAC25-150-120, 4VAC25-150-135, 4VAC25-150-140, 4VAC25-150-150, 4VAC25-150-160, 4VAC25-150-180, 4VAC25-150-190, 4VAC25-150-200, 4VAC25-150-210, 4VAC25-150-220, 4VAC25-150-230, 4VAC25-150-240, 4VAC25-150-250, 4VAC25-150-260, 4VAC25-150-280, 4VAC25-150-300, 4VAC25-150-310, 4VAC25-150-340, 4VAC25-150-360, 4VAC25-150-380, 4VAC25-150-390, 4VAC25-150-420, 4VAC25-150-460, 4VAC25-150-490, 4VAC25-150-500, 4VAC25-150-510, 4VAC25-150-520, 4VAC25-150-530, 4VAC25-150-550, 4VAC25-150-560, 4VAC25-150-590, 4VAC25-150-600, 4VAC25-150-610, 4VAC25-150-620, 4VAC25-150-630, 4VAC25-150-650, 4VAC25-150-660, 4VAC25-150-670, 4VAC25-150-680, 4VAC25-150-690, 4VAC25-150-700, 4VAC25-150-711, 4VAC25-150-720, 4VAC25-150-730, 4VAC25-150-740, 4VAC25-150-750).**

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

Effective Date: October 10, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-150, Virginia Gas and Oil Regulation. Sections within 4VAC25-150 are amended to correct technical areas for accuracy, improve worker safety, and provide clarity. Amending 4VAC25-150-150 will reduce workload and increase efficiency for applicants by providing flexibility and economy to the permit process. 4VAC25-150-90 is updated to include symbols that are consistent with current industry usage and available CAD technology. Amendments to 4VAC25-150-80, 4VAC25-150-260, 4VAC25-150-300, 4VAC25-150-380, and 4VAC25-150-630 protect the safety and health of oil and gas industry employees. An amendment to 4VAC25-150-90 brings consistency to data submission requirements for the Division of Gas and Oil.

Changes to the regulation since the proposed stage (i) increase the time frame for reclamation of permits from 90 to 180 days, (ii) correct citations, (iii) clarify requirements, and (iv) provide consistency with other department regulations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I
Standards of General Applicability

Article 1
General Information

4VAC25-150-10. Definitions.

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

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

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

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

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

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

"Board" means the Virginia Gas and Oil Board.

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

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

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

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

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

"Cement" means hydraulic cement properly mixed with water.

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

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

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

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

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

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

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

"Days" means calendar days.

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

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

"Detention basin" means a stormwater management facility which temporarily impounds and discharges runoff through an outlet to a downstream channel. Infiltration is negligible

when compared to the outlet structure discharge rates. The facility is normally dry during periods of no rainfall.

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

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

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

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

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

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

[~~"Division director" means the Director of the Division of Gas and Oil, also known as the Gas and Oil Inspector as defined in the Act.~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent

strata, thus, removing the gas that would normally be in the mine ventilation system.

"Water bar" means a small obstruction constructed across the surface of a road, pipeline right-of-way, or other area of ground disturbance in order to interrupt and divert the flow of water ~~down the~~ on a grade ~~of the road and divert the water to provide for sediment control~~ for the purpose of controlling erosion and sediment migration.

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

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

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

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

Article 2
Permitting

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

A. Applicability.

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

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

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

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

1. The name and address of:

a. The gas, oil or geophysical applicant;

b. The agent required to be designated under § 45.1-361.37 of the Code of Virginia; and

c. Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;

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

3. The proof of notice to affected parties required in § 45.1-361.29 E of the Code of Virginia, which shall be:

a. A copy of a signed receipt or electronic return receipt of delivery of notice by certified mail;

b. A copy of a signed receipt acknowledging delivery of notice by hand; or

c. If all copies of receipt of delivery of notice by certified mail have not been signed and returned within 15 days of mailing, a copy of the mailing log or other proof of the date the notice was sent by certified mail, return receipt requested;

4. If the application is for a permit modification, proof of notice to affected parties, as specified in subdivision C 3 of this section;

~~4.~~ 5. Identification of the type of well or other gas, oil or geophysical operation being proposed;

~~5.~~ 6. The plat in accordance with 4VAC25-150-90;

~~6.~~ 7. The operations plan in accordance with 4VAC25-150-100;

~~7.~~ 8. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350;

~~8.~~ 9. The location where the Spill Prevention Control and Countermeasure (SPCC) plan is available, if one is required;

~~9.~~ 10. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit on which a proposed gas, oil or geophysical operation is to be located;

~~10.~~ 11. For an application for a conventional well, the information required in 4VAC25-150-500;

~~11.~~ 12. For an application for a coalbed methane gas well, the information required in 4VAC25-150-560;

~~12.~~ 13. For an application for a geophysical operation, the information required in 4VAC25-150-670; and

~~13.~~ 14. For an application for a permit to drill for gas or oil in Tidewater Virginia, the environmental impact assessment meeting the requirements of § 62.1-195.1 B of the Code of Virginia.

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

4VAC25-150-90. Plats.

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

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

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

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

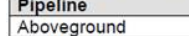
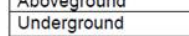
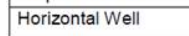
1. The proposed or actual surface elevation of the subject well or corehole shall be shown on the plat, within an accuracy of one vertical foot. The surface elevation shall be tied to either a government benchmark or other point of proven elevation by differential or aerial survey, ~~or~~ by trigonometric leveling, or by global positioning system (GPS) survey. The location of the government benchmark or the point of proven elevation and the method used to determine the surface elevation of the subject well or corehole shall be noted and described on the plat.

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

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

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

EDITOR'S NOTE: The symbols in subdivision 4 a through 1 designating well types are replaced with the following table:

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

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

E. Plats shall also contain:

1. For a conventional gas and oil or injection well, the information required in 4VAC25-150-510;

2. For a coalbed methane gas well, the information required in 4VAC25-150-590; or

3. For a corehole, the information required in 4VAC25-150-680.

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

4VAC25-150-100. Operations plans.

A. Each application for a permit or permit modification shall include an operations plan, in a format approved by or on a form prescribed by the director. The operations plan and

accompanying maps or drawings shall become part of the terms and conditions of any permit which is issued.

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

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

A. Permit supplements.

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

a. Does not change the disturbance area as described in the original permit; ~~or~~ and

b. Involves activities previously permitted.

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

2. Emergency permit supplements. If a change must be implemented immediately for an area off the disturbance area as described in the original permit, or for an activity not previously permitted due to actual or threatened imminent danger to the public safety or to the environment, the permittee shall:

a. Take immediate action to minimize the danger to the public or to the environment;

b. ~~Orally notify~~ Notify the director as soon as possible of actions taken to minimize the danger and, if the director determines an emergency still exists and grants oral approval, commence additional changes if necessary; and

c. Submit a ~~written~~ supplement to the permit within seven working days of notifying the director with a written description of the emergency and action taken. ~~The supplement shall contain a description of the activity which was changed, a description of the new activity, and any amended data, maps, plats, or other information required by the director.~~ An incident report may also be required as provided for in 4VAC25-150-380.

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

B. Permit modifications.

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

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

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

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

a. The name and address of:

(1) The permittee; and

(2) Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;

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

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

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

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

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

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

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

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

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

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

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

A. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Identification of the proposed activity being objected to;

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

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

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

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

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

2. Whether the objection is timely; and

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

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

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

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

1. The hearing shall be an informal fact finding hearing in accordance with the Administrative Process Act, § ~~9-6.14:11~~ 2.2-4019 of the Code of Virginia.

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

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

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

1. The subject, date, time and location of the hearing;

2. The names of the persons objecting to the permit;

3. A summary of issues and objections raised at the hearing;

4. Findings of fact and conclusions of law;

5. The text of the decision, including any voluntary agreement; and

6. Appeal rights.

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

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

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

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

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

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

4VAC25-150-180. Notices of violation.

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

1. Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;

2. This chapter;

3. [~~4VAC25 Chapter 160~~] ~~(4VAC25-160-10 et seq.)~~ [~~(~~] 4VAC25-160 [~~)~~] entitled [~~"The Virginia~~ "Virginia] Gas and Oil Board Regulation";

4. Any board order; or

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

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

1. The nature of the violation, including a reference to the section or sections of the Act, applicable regulation, order or permit condition which has been violated;

2. A reasonable description of the portion of the operation to which the violation applies, including an explanation of the condition or circumstance that caused the portion of the operation to be in violation, if it is not self-evident in the type of violation itself;

3. The remedial action required, which may include interim steps; and

4. A reasonable deadline for abatement, which may include a deadline for accomplishment of interim steps.

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

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

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

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

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

H. The director shall issue a decision on any request for an extension of the deadline for abatement under a notice of violation within five days of receipt of such request. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § ~~9-6.14:11~~

2.2-4019 of the Code of Virginia, no later than 10 days after receipt of the hearing request.

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

4VAC25-150-190. Closure orders.

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

1. Creates or can be reasonably expected to create an imminent danger to the health or safety of the public, including miners; or

2. Causes or can reasonably be expected to cause significant, imminent, environmental harm to land, air or water resources.

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

1. A permittee fails to meet the deadline for abatement or for completion of any interim step under a notice of violation;

2. Repeated notices of violations have been issued for the same condition or practice; or

3. Gas, oil or geophysical operations are being conducted by any person without a valid permit from the Division of Gas and Oil.

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

1. The nature of the condition, practice or violation;

2. A reasonable description of the portion of the operation to which the closure order applies;

3. The remedial action required, if any, which may include interim steps; and

4. A reasonable deadline for abatement, which may include deadline for accomplishment of interim steps.

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

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

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

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

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

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

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

4VAC25-150-200. Show cause orders.

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

1. A permittee fails to abate a condition or practice or complete any interim step as required in a closure order;

2. A permittee fails to comply with the provisions of [4VAC25 Chapter 160] (4VAC25-160-10 et seq.) [( ] 4VAC25-160 [ )] entitled ["The Virginia "Virginia] Gas and Oil Board Regulation"; or

3. A permittee fails to comply with the provisions of an order issued by the Virginia Gas and Oil Board.

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

1. The permit number of the operation subject to suspension or revocation; and

2. The reason for the show cause order.

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

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

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

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

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

Article 4
Reporting

4VAC25-150-210. Monthly reports.

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

B. Reports of gas production.

1. Every producer of gas shall report in Mcf the amount of production from each well.

2. Reports shall be summarized by county or city.

3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

C. Reports of oil production.

1. Every producer of oil shall report in barrels the amount of oil production, oil on hand and oil delivered from each well.

2. Reports shall be summarized by county or city.

3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

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

4VAC25-150-220. Annual reports.

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

B. The annual report shall include as appropriate:

1. A confirmation of the accuracy of the permittee's current registration filed with the division or a report of any change in the information;

2. The name, address and phone number or numbers of the persons to be contacted at any time in case of an emergency;

3. Production of gas or oil on a well-by-well and county-by-county or city-by-city basis for each permit or as prescribed by the director and the average price received for each Mcf of gas and barrel of oil;

4. Certification by the permittee that the permittee has paid all severance taxes for each permit; ~~and~~

5. When required, payment to the Gas and Oil Plugging and Restoration Fund as required in § 45.1-361.32 of the Code of Virginia~~.~~; and

6. Certification by the permittee that bonds on file with the director have not been changed.

Article 5
Technical Standards

4VAC25-150-230. Commencement of activity.

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

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

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

4VAC25-150-240. Signs.

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

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

1. The well is completed;

2. The dry hole or corehole is plugged;

3. The site is stabilized; or

4. The permanent sign is posted.

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

1. Be a minimum of 18 inches by 14 inches in size;

2. Contain, at a minimum, the permittee's name, the well name and the permit number, the Division of Gas and Oil phone number and the telephone number to use in case of an emergency or for reporting problems;

3. Contain lettering a minimum of ~~1 ¼~~ 1-1/4 [~~;~~] inches high; and

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

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

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

4VAC25-150-250. Blasting and explosives.

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

1. Blasting being conducted as part of seismic exploration where explosives are placed and shot in a borehole to generate seismic waves; or

2. Use of a device containing explosives for perforating a well.

B. Certification.

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

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

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

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

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

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

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

~~5. Misfires.~~

~~a. The handling of a misfired blast shall be under the direct supervision of a certified blaster.~~

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

~~6. Blasting signals.~~

~~a. Before a blast is fired, a warning signal audible to a distance of at least one-half mile shall be given by the blaster in charge, who shall make certain that all surplus explosives are in a safe place and that all persons are at a safe distance from the blast site or under sufficient cover to protect them from the effects of the blast.~~

~~b. A code of warning signals shall be established and posted in one or more conspicuous places on the permitted site, and all employees shall be required to conform to the code.~~

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

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

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

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

~~D. Ground vibration.~~

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

~~2. Blasting without seismographic monitoring. Blasting may be conducted by a certified blaster without seismographic monitoring provided the maximum charge is determined by the formula $W = (D/D_s)^2$ where W is the maximum weight of explosive in pounds per delay (eight milliseconds or greater); D is the actual distance in feet from the blast location to the nearest inhabited building; and D_s is the scaled distance factor to be applied without seismic monitoring, as found in Table 1.25.D-1.~~

~~TABLE 1.25.D-1: MAXIMUM ALLOWABLE PEAK VELOCITY~~

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

~~3. Blasting with seismographic monitoring.~~

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

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

EDITOR'S NOTE: Table 1.25 D-2: Alternative Blasting Level Criteria is not printed and is deleted by this regulatory action.

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

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

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

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

Table 1.25.E-1: AIRBLAST LIMITS

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

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

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

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

G. Records.

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

a. Name of company or contractor;

b. Location, date, and time of the blast;

c. Name, signature, and certification number of the blaster in charge;

d. Type of material blasted;

e. Number of holes; their burden and spacing;

f. Diameter and depth of the holes;

g. Types of explosives used;

h. Total amount of explosives used per hole;

i. Maximum weight of explosives per delay period;

j. Method of firing and the type of circuit;

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

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

m. Height or length of stemming;

n. Description of any mats or other protection used;

o. Type of detonators and delay periods used; and

p. Any seismograph reports, including:

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

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

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

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

(5) The seismograph reading.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Temporary sediment control structures such as basins, traps, berms or sediment barriers shall be constructed prior to beginning other ground-disturbing activity and shall be maintained until the site is stabilized.

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

6. Sediment basins.

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

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

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

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

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

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

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

12. Live watercourses.

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

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

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

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

Distance Barrier Spacing

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

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

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

a. Control or prevent erosion and siltation by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

b. Control runoff to minimize downstream sedimentation and flooding; and

c. Use nonacid or nontoxic substances in road surfacing.

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

D. Final reclamation standards.

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

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

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

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

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

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

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

4VAC25-150-280. Logs and surveys.

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

strata, coal seams, mineral beds and gas- or oil-bearing formations.

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

1. The vertical location of coal seams in the ~~borehole~~ well or corehole shall be determined and shown in the driller's log and gamma ray or other log.

2. The horizontal location of the ~~borehole~~ well or corehole in coal seams shall be determined through an inclination survey from the surface to the lowest known coal seam. Each inclination survey shall be conducted as follows:

a. The first survey point shall be taken at a depth not greater than the most shallow coal seam; and

b. Thereafter shot points shall be taken at each coal seam or at intervals of 200 feet, whichever is less, to the lowest known coal seam.

3. Prior to drilling any ~~borehole into~~ well or corehole within 500 feet of a coal seam ~~in which active mining is being conducted within 500 feet of where the borehole will penetrate the seam~~ [~~where workers are assigned or travel, as well as any connected sealed or gob areas, or where a mine plan is on file with the Division of Mines~~ in which there are active workings], the permittee shall conduct an inclination survey to determine whether the deviation of the ~~bore hole~~ well or corehole exceeds one degree from true vertical. If the ~~borehole~~ well or corehole is found to exceed one degree from vertical, then the permittee shall:

a. Immediately cease operations;

b. Immediately notify the coal owner and the division;

c. Conduct a directional survey to drilled depth to determine both horizontal and vertical location of the ~~borehole~~ well or corehole; and

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

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

a. Correct the ~~borehole~~ well or corehole to within one degree of true vertical; or

b. Conduct a directional survey to the lowest known coal seam and notify the coal owner of the actual ~~borehole~~ well or corehole location.

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

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

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

4VAC25-150-300. Pits.

A. General requirements.

1. Pits are to be temporary in nature and are to be reclaimed when the operations using the pit are complete. All pits shall be reclaimed within ~~90~~ 180 days unless a variance is requested and granted by the field inspector.

2. Pits may not be used as erosion and sediment control structures or stormwater management structures, and surface drainage may not be directed into a pit.

3. Pits shall have a properly installed and maintained liner or liners made of 10 mil or thicker high-density polyethylene or its equivalent.

~~B. Technical requirements.~~

~~1.~~ 4. Pits shall be constructed of sufficient size and shape to contain all fluids and maintain a two-foot freeboard.

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

~~C.~~ B. Operational requirements.

1. The integrity of lined pits must be maintained until the pits are reclaimed or otherwise closed. Upon failure of the lining or pit, the operation shall be shut down until the liner and pit are repaired or rebuilt. The permittee shall notify the division, by the quickest available means, of any pit leak.

2. Motor oil and, to the extent practicable, crude oil shall be kept out of the pit. Oil shall be collected and disposed of properly. Litter and other solid waste shall be collected and disposed of properly and not thrown into the pit.

3. At the conclusion of drilling and completion operations or after a dry hole, well or corehole has been plugged, the pit shall be drained in a controlled manner and the fluids disposed of in accordance with 4VAC25-150-420. If the pit is to be used for disposal of solids, then the standards of 4VAC25-150-430 shall be met.

4VAC25-150-310. Tanks.

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

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

C. Every permanent tank or battery of tanks shall ~~be surrounded by a~~ have secondary containment achieved by constructing a dike or firewall with a capacity of ~~1½~~ 1-1/2 times the volume of the ~~single tank, or largest tank in a battery of tanks~~ largest tank when plumbed at the top, or all tanks when plumbed at the bottom, utilizing a double wall tank or another method approved by the division.

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

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

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

4VAC25-150-340. Drilling fluids.

A. Operations plan requirements. Applicants for a permit shall provide, prior to commencing drilling, documentation that the water meets the requirements of subsection B of this section, and a general description of the additives and muds to be used in all stages of drilling. Providing that the requirement in 4VAC25-150-340 C is met, variations necessary because of field conditions may be made with prior approval of the director and shall be documented in the driller's log.

B. Water quality in drilling.

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

a. Water that is from a water well or spring located on the drilling site; or

b. Conduct an analysis of groundwater within 500 feet of the drilling location, and use:

(1) Water which is of equal or better quality than the groundwater; or

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

If, after a diligent search, a groundwater source (such as a well or spring) cannot be found within 500 feet of the drilling location, the applicant may use water meeting the parameters listed in the Department of Environmental Quality's [~~"Water Quality Criteria for Groundwater,"~~ "Ground water criteria,"] ~~9VAC25-260-230 et seq.~~ 9VAC25-280-70 [.] The analysis shall include, but is not limited to, the following items:

(1) Chlorides;

(2) Total dissolved solids;

(3) Hardness;

(4) Iron;

(5) Manganese;

(6) PH;

(7) Sodium; and

(8) Sulfate.

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

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

C. Drilling muds. No permittee may use an oil-based drilling fluid or other fluid which has the potential to cause acute or chronic adverse health effects on living organisms unless a variance has been approved by the director. Permittees must explain the need to use such materials and provide the material data safety sheets. In reviewing the request for the variance, the director shall consider the concentration of the material, the measures to be taken to control the risks, and the need to use the material. Permittees shall also identify what actions will be taken to ensure use of the additives will not cause a lessening of groundwater quality.

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

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

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

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

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

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

A. ~~Accidents~~ [~~.~~] Incidents. A permittee shall, by the quickest available means, notify the ~~director~~ division in the event of any unplanned off-site disturbance, fire, blowout, pit failure, hydrogen sulfide release, unanticipated loss of drilling

fluids, or other ~~accident~~ incident resulting in serious personal injury or an actual or potential imminent danger to a worker, the environment, or public safety ~~or welfare~~. The permittee shall take immediate action to abate the actual or potential danger. The permittee shall submit a written or electronic report within seven days of the incident containing:

1. A description of the incident and its cause;

2. The date, time and duration of the incident;

3. A description of the steps that have been taken to date; ~~and~~

4. A description of the steps planned to be taken to prevent a recurrence of the incident~~.~~; and

5. Other agencies notified.

B. On-site spills.

1. A permittee shall take all reasonable steps to prevent, minimize, or correct any spill or discharge of fluids on a permitted site which has a reasonable likelihood of adversely affecting human health or the environment. All actions shall be consistent with the requirements of an abatement plan, if any has been set, in a notice of violation or closure, emergency or other order issued by the director.

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

a. A description of the incident and its cause;

b. The period of release, including exact dates and times;

c. A description of the steps to date; and

d. A description of the steps to be taken to prevent a recurrence of the release.

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

1. A listing of all agencies contacted about the spill or unpermitted discharge; and

2. All actions taken to contain, clean up or mitigate the spill or unpermitted discharge.

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

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

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

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

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

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

A permittee shall not dispose of fluids from a well, pipeline or corehole until the director has approved the permittee's plan for permanent disposal of the fluids. Temporary storage of pit or produced fluids is allowed with the approval of the director. Other fluids shall be disposed of in accordance with the operations plan approved by the director.

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

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

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

1. Fluids to be land-applied shall meet the parameters listed in the Department of Environmental Quality's [~~"Water Quality Criteria for Groundwater,"~~ "Ground water criteria,"] ~~(9VAC25-260-230 et seq.).~~ (9VAC25-280-70), following criteria:

Acidity: <alkalinity

Alkalinity: >acidity

Chlorides: <5,000 mg/l

Iron: <7 mg/l

Manganese: <4 mg/l

Oil and Grease: < 15 mg/l

pH: 6-9 Standard Units

Sodium Balance: SAR of 8-12

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

3. Fluids shall be applied in a manner which will not cause erosion or runoff. The permittee shall take into account site

conditions such as slope, soils and vegetation when determining the rate and volume of land application on each site. As part of the application narrative, the permittee shall show the calculations used to determine the maximum rate of application for each site.

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

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

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

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

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

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

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

E. Off-site disposal of fluids.

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

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

b. Documentation that the facility will accept the fluids.

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

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

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

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

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

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

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

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

Part II

Conventional Gas and Oil Wells and Class II Injection Wells

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

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

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

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

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

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

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

1. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth to which the well has been drilled;

2. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

3. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented; and

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

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

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

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

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

1. The boundaries of any drilling unit established by the board around the subject well;

2. The boundaries and acreage of the tract on which the well is located or is to be located;

3. The boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

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

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

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

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

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

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

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

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

A. Water-protection string.

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

2. The operator shall test or require the cementing company to test the cement mixing water for pH and

temperature prior to mixing the cement and to record the results on the cementing ticket.

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

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

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

B. Coal-protection strings.

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

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

3. Depth of coal-protection strings:

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

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

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

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

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

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

E. Casing through voids.

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

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

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

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

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

Part III
Coalbed Methane Gas Wells

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

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

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

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

1. An identification of the category of owner or operator, as listed in § 45.1-361.30 A of the Code of Virginia, that each person notified of the application belongs to;

2. The signed consent required in § 45.1-361.29 of the Code of Virginia;

3. Proof of conformance with any mine development plan in the vicinity of the proposed coalbed methane gas well, when the Virginia Gas and Oil Board has ordered such conformance;

4. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth if the well has been drilled;

5. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

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

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

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

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

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

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

1. Boundaries and acreage of any drilling unit established by the board around the subject well;

2. Boundaries and acreage of the tract on which the well is located or is to be located;

3. Boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less,

or within the boundaries of a drilling unit established by the board around the subject well;

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

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

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

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

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

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

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

A. Water protection string.

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

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

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

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

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

B. Coal protection strings.

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

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

a. The cementing of a coal-protection string in multiple stages;

b. The cementing of two or more coal-protection strings; or

c. The use of other alternative casing procedures.

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

4. Depth of coal-protection strings.

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

b. If an unanticipated coal seam or seams are discovered in the uncased interval, the permittee shall report the

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

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

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

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

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

E. Casing through voids.

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

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

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

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

G. Production casing.

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

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

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

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

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

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

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

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

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

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

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

Part IV
Ground-Disturbing Geophysical Exploration

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

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

4VAC25-150-670. Application for a permit, geophysical activity or coreholes.

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

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

1. The approximate depth to which the corehole is proposed to be drilled or deepened, or the actual depth if the corehole has been drilled;

2. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the corehole is proposed to be drilled;

3. If casing is proposed to be set, the entire casing program, including the diameter of each string of casing, the starting point and depth to which each string is to be set, whether or not the casing is to remain in the hole after the completion of drilling, and the extent to which each string is to be cemented, if applicable; ~~and~~

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

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

4VAC25-150-680. Plats, coreholes.

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

1. The boundaries of the tract on which the corehole is located or is to be located;

2. Surface owners on the tract to be drilled and surface owners on the tracts where the surface is to be disturbed;

3. Coal owners and mineral owners on the tract to be drilled;

4. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled; and

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

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

4VAC25-150-690. Operations plans, coreholes.

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

4VAC25-150-700. Setback restrictions, coreholes.

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

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

A. Casing through voids.

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

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

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

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

Part V
Gathering Pipelines

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

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

1. All of Article 1, "General Information"; except 4VAC25-150-50, "Gas or oil in holes not permitted as a gas or oil well";

2. All of Article 2, "Permitting"; except 4VAC25-150-90, "Plats";

3. All of the sections in Article 3, "Enforcement";

4. 4VAC25-150-220, "Annual reports," [~~;~~] of Article 4, "Reporting";

5. 4VAC25-150-230, 4VAC25-150-240, 4VAC25-150-250, 4VAC25-150-260, 4VAC25-150-270, 4VAC25-150-310, 4VAC25-150-350, 4VAC25-150-380, 4VAC25-150-410, 4VAC25-150-420, and 4VAC25-150-430 of Article 5, "Technical Standards"; and

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

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

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

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

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

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

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

1. All plastic gathering pipeline connections shall be fused, not coupled.

2. All buried gathering pipelines shall be detectable by magnetic or other remote means from the surface.

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

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

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

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

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

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

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

VA.R. Doc. No. R08-1318; Filed August 21, 2013, 7:15 a.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

September 12, 2013 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA

Public Comment Deadline: September 12, 2013.

Agency Contact: Paul M. Brennan, General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798 or email paul.brennan@vhda.com.

Summary:

The proposed amendments (i) continue the new construction pool; (ii) implement maximum total development cost limits for developments to be eligible to receive credits; (iii) revise point categories for subsidized funding, developments in census tracts with less than a 10% poverty rate, the use of brick, energy efficient water heaters, bath vents, wall sheathing insulation, fire prevention features, applicants servicing elderly and disabled tenants, EarthCraft certification, developer experience, and bonus point categories serving lower income households; (iv) delete the point categories for new project-based subsidy and community/meeting rooms; (v) add penalty points when cost limits are exceeded; and (vi) make other miscellaneous administrative clarification changes.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

Any application that exceeds the cost limits set forth below in subdivisions 1, 2, and 3 shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

1. Inner Northern Virginia. The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: $335,475 per unit plus up to an additional $37,275 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: $292,875 per unit.

2. Prince William County and Loudoun County. The total development cost of proposed developments in Prince William County and Loudoun County may not exceed (i) for new construction or adaptive reuse: $228,975 per unit or (ii) for acquisition/rehabilitation: $175,725 per unit.

3. Balance of state. The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: $186,375 per unit or (ii) for acquisition/rehabilitation: $117,150 per unit.

The cost limits in subdivisions 1, 2, and 3 above are 2012 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of 2013 by the authority in accordance with Marshall & Swift cost factors for

such quarter, and the adjusted limits will be indicated on the application form, instructions, or other communication available to the public.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis,

and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

~~b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in~~

~~which the proposed development is to be located stating, without qualification or limitation, the following:~~

~~"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)~~

~~(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)~~

~~(3)~~ b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. ~~(0 points)~~ Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Virginia Housing Trust Fund, funding from VOICE for projects located in Prince William County, Authority REACH funding and donations from unrelated private foundations that have filed an IRS Form 990 (or ~~the~~ a variation of such form) or Rural Development for a below-market rate loan or grant ~~or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development~~; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving ~~(i)~~ a real estate tax abatement on the increase in the value of the development ~~or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development~~. (10 points)

i. Any proposed elderly development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other elderly tax credit units in such census tract. (25 points)

j. Any proposed family development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other family tax credit units in such census tract. (25 points)

~~j.~~ k. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

~~k.~~ l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances: (1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures; (2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or (3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

~~l.~~ m. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

~~(a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)~~

~~(b)~~ (a) If the exterior walls are constructed using the following materials:

(i) Brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) covering 30% or more of the exterior walls. ~~(20 points times the percentage of exterior walls covered by brick)~~ (10 points) and

(ii) If subdivision (a)(i) above is met, an additional one-fifth point for each percent of exterior wall brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) in excess of 30%. (maximum 10 points) and

(iii) If subdivision (a)(i) above is met, an additional one-tenth point for each percent of exterior wall covered by fiber-cement board. (maximum 7 points)

~~(c)~~ (b) If all kitchen and laundry appliances (except range hoods) meet the EPA's Energy Star qualified program requirements. (5 points)

~~(d)~~ (c) If all the windows and glass doors meet the EPA's Energy Star qualified program requirements. (5 points)

~~(e)~~ (d) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

~~(f)~~ (e) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

~~(g)~~ (f) If each bathroom contains only WaterSense labeled faucets and showerheads. (2 points)

~~(h)~~ (g) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

~~(i)~~ (h) If all the water heaters ~~meet the EPA's Energy Star qualified program requirements~~ have an energy factor greater than or equal to 67% for gas water heaters or greater than or equal to 93% for electric water heaters; or any centralized commercial system that has ~~a 95%+~~ an efficiency performance rating equal to or greater than 95%, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

~~(j)~~ (i) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

~~(k) If~~ (j) For new construction only, if each full bathroom is equipped with EPA Energy Star qualified bath vent fans. (2 points)

~~(l) New~~ (k) If the development has or the application provides for installation of continuous R-3 or higher wall sheathing insulation. (5 points)

~~(m)~~ (l) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's ~~design and construction standards. (4 points for fire prevention or 2 points for fire suppression)~~ requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

(2) The following points are available to applications electing to serve elderly ~~and/or physically disabled~~ tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

~~The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 70 points.~~

b. Any ~~nonelderly development or elderly rehabilitation~~ development in which (i) the greater of 5 units or 10% of the units will be ~~subject to~~ assisted by HUD project-based vouchers (as evidenced by the submission of a fully executed agreement to enter into a housing assistance payments (AHAP) contract for the development between the applicant and an authorized public housing authority (PHA)), or other form of documented and binding federal project-based rent subsidies or equivalent assistance (approved by the executive director) in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to ~~people~~ persons with ~~special needs~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in (ii) above must include roll-in showers and roll-under sinks and ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

c. Any ~~nonelderly development or elderly rehabilitation~~ development in which the greater of 5 units or 10% of the units (i) ~~have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii)~~ conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and ~~(iii)~~ (ii) are actively marketed to ~~people~~ persons with ~~mobility impairments including HCV holders~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

d. Any ~~nonelderly development or elderly rehabilitation~~ development in which ~~4.0%~~ 5.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to ~~people~~ persons with ~~mobility impairments~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (15 points)

e. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

f. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development~~,~~ or ~~a new construction~~ EarthCraft certified development ~~that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft~~; 30 points for a LEED Gold development~~, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft~~ or EarthCraft Gold development; 45 points for a LEED Platinum development~~, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft~~ or EarthCraft Platinum development.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

g. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the

units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

h. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals~~, as a group~~ of the controlling general partner or ~~individually,~~ managing member for the proposed development have developed~~, as~~:

(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments ~~that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)~~. (50 points) or

~~b. Evidence that the principal or principals for the proposed development have developed~~

(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entity(s) or person(s), including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including but not limited to: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points) or

(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

~~c.~~ Applicants receiving points under subdivision 5 a (1) and (2) above are not eligible for points under subdivision a of subdivision 1, Readiness, above.

b. Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the time frame established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

~~d.~~ c. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

~~e.~~ d. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

~~f.~~ e. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

f. Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit, the following penalty points shall apply:

(1) An excess of 1.0% or less (minus 10 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the executive director determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).

(2) An excess between 1.0% and 5.0% (minus 30 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).

(3) An excess of 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the ~~propsed~~ proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. ~~(The~~ (Up to 50 points, the product of (i) ~~50 points~~ 62.5 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. ~~(The~~ (Up to 25 points, the product of (i) ~~25 points (50 points for proposed developments in low-income jurisdictions)~~ 31.25 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional

10 points.) Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~450~~ 425 points ~~(450~~ (325 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the

financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in

the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation, if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple

applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the

application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for either (i) at least 50% of the units in the development or (ii) if HUD Section 811 funds are providing the rent subsidies, as close to, but not more than 25% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R14-3842; Filed August 20, 2013, 3:10 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Titles of Regulations: **14VAC5-280. Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements (amending 14VAC5-280-10, 14VAC5-280-30, 14VAC5-280-40, 14VAC5-280-70).**

14VAC5-290. Rules Establishing Standards for Companies Deemed to Be in Hazardous Financial Condition (amending 14VAC5-290-30).

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

Effective Date: September 16, 2013.

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

Summary:

Chapter 539 of the 2012 Acts of Assembly incorporated revisions made to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law that reformed the treatment of reinsurance transactions, including allowing for the certification of reinsurers. The

amendments conform the regulations to those changes by (i) adding health maintenance organizations to the definition of "life and health business" and (ii) deleting references to and provisions based on § 38.2-1316.3 or 38.2-1316.6 of the Code of Virginia, which were repealed by Chapter 539.

The changes to the regulation since the proposed stage make the severability section consistent with severability provisions in other Bureau of Insurance regulations.

AT RICHMOND, AUGUST 21, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2013-00095

Ex Parte: In the matter of
Amending the Rules Establishing Standards
For Life, Annuity, and Accident and Sickness
Reinsurance Agreements and the Rules Establishing
Standards for Companies Deemed to be in
Hazardous Financial Condition

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered June 7, 2013, all interested persons were ordered to take notice that subsequent to August 6, 2013, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to Chapters 280 and 290 of Title 14 of the Virginia Administrative Code, entitled Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements, 14VAC5-280-10 et seq., and Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition, 14VAC5-290-10 et seq. (collectively, "Rules"), respectively, which amend the Rules at 14VAC5-280-10, 14VAC 5-280-30, 14VAC5-280-40, 14VAC5-280-70, and 14VAC5-290-30. These amendments were proposed by the Bureau of Insurance ("Bureau"). The Order required that on or before August 6, 2013, any person objecting to the amendments to the Rules shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

No request for a hearing was filed with the Clerk.

The Order also required all interested persons to file their comments in support of or in opposition to the amendments to the Rules on or before August 6, 2013.

No comments were filed with the Clerk.

The amendments to Chapters 280 and 290 are necessary to implement the provisions of House Bill 1139 passed by the 2012 General Assembly. This legislation incorporates revisions made to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, which reforms the treatment of reinsurance transactions, including allowing for the certification of reinsurers. The revisions to Chapters 280 and 290 include: (i) the addition of a reference to HMOs under the definition of "life and health business" in 14VAC5-280-10, (ii) the deletion of the reference in 14VAC5-280-30 to § 38.2-1316.6 of the Code of Virginia ("Code"), which was repealed by House Bill 1139, and the addition of a reference to § 38.2-1316.1 of the Code et seq., (iii) the deletion of 14VAC5-280-40 A 2 because this provision pertains to provisions that were in § 38.2-1316.6 of the Code, (iv) the revision of 14VAC5-280-70 to provide consistency with other severability sections, and (v) the deletion of the reference in 14VAC5-290-30 to § 38.2-1316.3 of the Code, which was also repealed by House Bill 1139.

The Bureau recommends that these Rules be adopted as revised.

NOW THE COMMISSION, having considered this matter and the Bureau's recommendation to amend and revise the Rules, is of the opinion that the Rules should be adopted as amended and revised.

Accordingly, IT IS ORDERED THAT:

(1) The amendments and revisions to Chapters 280 and 290 of Title 14 of the Virginia Administrative Code, entitled Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements, 14VAC5-280-10 et seq., and Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition, 14VAC5-290-10 et seq., respectively, which amend the Rules at 14VAC5-280-10, 14 VAC5-280-30, 14VAC5-280-40, 14VAC 5-280-70, and 14VAC5-290-30, and which are attached hereto and made a part hereof, are hereby ADOPTED and made effective as of September 16, 2013.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended and revised Rules shall be sent by the Clerk of the Commission to Douglas C. Stolte, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adopted amended and revised Rules by mailing a copy of this Order, including a clean copy of the Rules, to every entity that is licensed, approved, registered, or accredited in Virginia under the provisions of Title 38.2 of the Code and also subject to solvency regulation in this Commonwealth pursuant to the provisions of Title 38.2 of the Code, as well as to all interested parties.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amended and revised Rules at 14VAC5-280-10 et seq. and 14VAC5-290-10 et seq., to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amended and revised Rules at 14VAC5-280-10 et seq. and 14VAC5-290-10 et seq., on the Commission's website: http://www.scc.virginia.gov/case.

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

(6) This matter is dismissed.

14VAC5-280-10. Definitions.

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

"Commission" means State Corporation Commission.

"Insurer" means a cooperative nonprofit life benefit company, a mutual assessment life, accident and sickness insurer, a fraternal benefit society, a health services plan, a dental services plan, or an optometric services plan licensed under Title 38.2 of the Code of Virginia; and also any insurance company, whether known as a life and health insurer, a property and casualty insurer, or a reciprocal, which is licensed in Virginia and authorized to write any class of life insurance, annuities, or accident and sickness insurance.

"Life and health business" means (i) a class of insurance defined by §§ 38.2-102 through 38.2-109 of the Code of Virginia or (ii) any product or service sold or offered by a person organized and licensed in Virginia under Chapter 38 (§ 38.2-3800 et seq., cooperative nonprofit life benefit companies), Chapter 39 (§ 38.2-3900 et seq., mutual assessment life, accident and sickness insurers), Chapter 41 (§ 38.2-4100 et seq., fraternal benefit societies), Chapter 42 (§ 38.2-4200 et seq., health services plans), Chapter 43 (§ 38.2-4300 et seq., health maintenance organizations), or Chapter 45 (§ 38.2-4500 et seq., dental or optometric services plans) of Title 38.2 of the Code of Virginia.

14VAC5-280-30. Scope.

This ~~regulation~~ chapter shall apply to the life and health business of all domestic insurers and to the life and health business of all other licensed insurers who are not subject to substantially similar provisions in their states of domicile or entry.

This ~~regulation~~ chapter shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance; however, nothing herein shall in any way limit or prevent the application of ~~§ 38.2-1316.6~~ Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 or any other provision in Title 38.2 of the Code of Virginia to any type of insurer, business or reinsurance regardless of whether such application entails a standard or principle set forth in this ~~regulation~~ chapter.

14VAC5-280-40. Accounting and actuarial requirements.

A. No insurer subject to this ~~regulation~~ chapter shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commission if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. The reserve credit taken by the ceding insurer is not in compliance with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission.

~~2. The reserve credit taken by the ceding insurer is greater than the amount which the ceding insurer would have reserved on the reinsured portion of the risk if there had been no reinsurance.~~

~~3.~~ 2. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by that ceding insurer, shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

~~4.~~ 3. The ceding insurer can be deprived of surplus or assets (i) at the reinsurer's option; or (ii) automatically upon the occurrence of some event, such as the insolvency of the ceding insurer or the appointment of a receiver; or (iii) upon the unilateral termination or reduction of reinsurance coverage by the reinsurer or by the terms of the reinsurance contract. Termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

~~5.~~ 4. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

~~6.~~ 5. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

~~7.~~ 6. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using

assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured.

~~8.~~ 7. The terms or operating effect of the reinsurance agreement are such that it does not transfer all of the significant risk inherent in the business being reinsured. The table at Exhibit 1 identifies for a representative sampling of products or types of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

~~9.~~ 8. a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision ~~9 b)~~ 8 b of this subsection) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commission which legally segregates, by contract or contract provision, the underlying assets.

b. Notwithstanding the requirements of subdivision ~~9~~ 8 a of this subsection, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

- (1) Health Insurance - Long Term Care/Long Term Disability
- (2) Traditional Nonparticipating Permanent
- (3) Traditional Participating Permanent
- (4) Adjustable Premium Permanent
- (5) Indeterminate Premium Permanent
- (6) Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. An acceptable formula appears at Exhibit 2.

~~10.~~ 9. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

~~11.~~ 10. The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

~~12.~~ 11. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

~~13.~~ 12. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

B. Compliance with the conditions of subsection A of this section is not to be interpreted to diminish the requirement of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia that the reserve credits taken must be based upon the actual liability assumed by the reinsurer to reimburse the ceding company for benefits that the ceding company is obligated to pay under its direct policies and which gave rise to the requirement of statutory reserves.

C. The ceding insurer's actuary responsible for the valuation of the reinsured business shall consider this ~~regulation~~ chapter and any applicable actuarial standards of practice when determining the proper reinsurance credit in financial statements filed with the commission. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work that substantiates the reserves, reserve credits or any other reserve adjustments reported in the financial statement and to demonstrate to the satisfaction of the commission that such work conforms to the provisions of this ~~regulation~~ chapter.

D. Notwithstanding subsection A of this section, an insurer subject to this regulation may, with the prior approval of the commission, take such reserve credit or establish such asset as the commission may deem consistent with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission. All of the insurer's financial statements filed with the commission pursuant to § 38.2-1300 or ~~§~~ 38.2-1301 of the Code of Virginia shall thereafter disclose the reduction in liability or the establishment of an asset.

E. 1. Each agreement entered into after March 31, 1995, which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding insurer with the commission within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall be subject to the standards set forth in subsection C of this section.

2. Any increase in surplus net of federal income tax resulting from arrangements described in subdivision ~~E~~ 1 of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (e.g., as part of the aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account reported at

page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" portions of the Annual Statement (e.g., Exhibit 1 and Summary of Operations for the life insurer's blue blank and the Underwriting Exhibit and Statement of Income for the property and casualty insurer's yellow blank) as earnings emerge from the business reinsured.

Example: On the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus Account. $6.8 million (34% of $20 million) is reported as income (on the "Commissions and expense allowances on reinsurance ceded" line of the life insurer's Summary of Operations or as "Other underwriting expenses incurred" on the property and casualty insurer's Statement of Income).

At the end of year N+1 the business has earned $4 million. ABC has paid $0.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement (blue blank) would report $1.65 million (66% of ($4 million - $1 million - $0.5 million) up to a maximum of $13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus Account. In addition, the experience refund would be reported separately as a miscellaneous income item in a life insurer's Summary of Operations and the "Other Income" segment of the property and casualty insurer's Underwriting and Investment Exhibit, Statement of Income.

14VAC5-280-70. Severability.

If any provision in this ~~regulation~~ chapter or [~~the~~ its] application [~~thereof~~] to any person or circumstance is ~~held~~ for any reason held to be invalid [by a court], the remainder of [~~the~~] ~~provisions in this regulation~~ [this] chapter and the application of the [~~provision~~ provisions] to other persons or circumstances shall not be affected [~~thereby~~].

14VAC5-290-30. Standards.

The following factors and standards, either singly or a combination of two or more, may be considered in determining whether an insurer's financial condition, method of operation, or manner of doing business in this Commonwealth might be deemed to be hazardous to its policyholders, creditors, or the general public:

1. Adverse findings resulting from any financial condition or market conduct examination conducted pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia or any inspection authorized by the general provisions of § 38.2-200, including inspections of financial statements filed pursuant to §§ 38.2-1300, 38.2-1301, 38.2-1316.2, ~~38.2-1316.3,~~ 38.2-4811, or 38.2-5103 of the Code of Virginia, or reported in any examination or other information submitted pursuant to § 38.2-5103 of the Code of Virginia, or reported in any audit report, and actuarial opinions, reports, or summaries submitted pursuant to §§ 38.2-1315.1 and 38.2-3127.1 of the Code of Virginia;

2. The National Association of Insurance Commissioners' ("NAIC") Insurance Regulatory Information System ("IRIS") and its other financial analysis solvency tools and reports;

3. The ratio of the annual premium volume to surplus or of liabilities to surplus in relation to loss experience and/or the kinds of risks insured;

4. Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operation leverage is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

5. Whether the insurer has established reserves and related actuarial items that make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

6. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

7. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

8. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

9. Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50% in the preceding 12-month period or any shorter period of time;

10. The age and collectibility of receivables;

11. Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;

12. Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that may affect the solvency of the insurer;

13. Whether any affiliate of an insurer is delinquent in the transmitting to, or payment of, net premiums or other amounts due to such insurer;

14. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

15. Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

16. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commission;

17. Whether the management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

18. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

19. Whether the insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

20. Whether management has established reserves and related actuarial values that do not comply with the requirements of Title 38.2 of the Code of Virginia, related rules, regulations, administrative promulgations, and statutory accounting standards, or that are not computed in accordance with presently accepted actuarial standards consistently applied and in accordance with sound actuarial principles and standards of practice;

21. Whether management persistently engages in material under reserving that results in adverse development;

22. Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

23. Any other finding determined by the commission to be hazardous to the insurer's policyholders, creditors, or the general public.

VA.R. Doc. No. R13-3705; Filed August 21, 2013, 2:58 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

REGISTRAR'S NOTICE: The following Safety and Health Codes Board regulatory actions are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Final Regulation

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.97, 16VAC25-90-1910.145, 16VAC25-90-1910.261).**

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.200, 16VAC175-1926.201, 16VACF25-175-1926.202).

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: November 1, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

On June 13, 2013, federal OSHA issued a Direct Final Rule to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute (ANSI) standards on specifications for accident prevention signs and tags, ANSI Z535.1-2006 (R2011), Z535.2-2011, and Z535.5-2011, along with an identical proposed rule (78 FR 35585). This Direct Final Rule updates the references to ANSI consensus standards in four provisions of OSHA's general industry and construction standards: §§1910.97, Nonionizing radiation; 1910.145, Specifications for accident prevention signs and tags; 1910.261, Pulp, paper, and paper board mills; and 1926.200 Accident prevention signs and tags. OSHA also retained the existing references to the earlier ANSI standards, ANSI Z53.1-1967, Z35.1-1968, and Z35.2-1968,

in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. OSHA also incorporated by reference Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards, having inadvertently omitted this edition of the MUTCD from §§ 1926.201, Signaling, and 1926.202, Barricades, during an earlier rulemaking and amended citations in two provisions of the construction standards to show the correct incorporation-by-reference section.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On July 18, 2013, the Safety and Health Codes Board adopted federal OSHA's Direct Final Rule to Update OSHA's Standards Based on National Consensus Standards for Signage, as published in 78 FR 35566 through 78 FR 35567 on June 13, 2013, with an effective date of November 1, 2013.

Federal Terms and State Equivalents: When the regulations as set forth in the Direct Final Rule to Update OSHA's Standards Based on National Consensus Standards for Signage are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 11, 2013	November 1, 2013

VA.R. Doc. No. R14-3834; Filed August 20, 2013, 3:09 p.m.

Final Regulation

Titles of Regulations: **16VAC25-150. Underground Construction, Construction Industry (amending 16VAC25-150-10).**

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.856, 16VAC25-175-1926.858).

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: November 1, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Background:

On August 17, 2012, federal OSHA published both a direct final rule and a companion notice of proposed rulemaking to amend OSHA's construction standards in Subpart S (Underground Construction, Caissons, Cofferdams, and Compressed Air) and Subpart T (Demolition) of OSHA's construction standards at 29 CFR Part 1926 (77 FR 49722; 77 FR 49741). The identical amendments apply Subpart CC (Cranes and Derricks in Construction) of Part 1926, which contains requirements for cranes and derricks used in construction, to underground construction work and to demolition work, involving equipment covered by Subpart CC. Additionally, the dual rulemaking corrected inadvertent errors made to the underground construction and demolition standards in the 2010 rulemaking.

On September 12, 2012, the Safety and Health Codes Board adopted OSHA's Direct Final Rule on Cranes and Derricks in Construction: Demolition and Underground Construction (DFR), with an effective date of January 1, 2013. This action was based on the assumption that the DFR would become effective for federal OSHA. The DFR was scheduled to become effective on November 15, 2012; however, OSHA received a significant adverse comment to the DFR and its companion proposed rule within the specified comment period, which ended on September 17, 2012. Therefore, the DFR did not become effective and OSHA proceeded with a final rule. This action is the continuation of that companion rulemaking.

Summary:

This regulatory action adopts (i) federal OSHA's required amendment to Virginia's unique regulation for underground construction in 16VAC25-150 and (ii) federal OSHA's amendments to 29 CFR 1926.856 and 29 CFR 1926.858 as federal identical standards in 16VAC26-175. Federal OSHA's final rule applies the same crane rules to underground construction and demolition that are already being used by other construction sectors and streamlines OSHA's standards by eliminating the separate cranes and derricks standards currently used for underground and demolition work. The rule also corrects errors made to the underground construction and demolition standards in the 2010 rulemaking. The amendments in this final rule result in more stringent requirements for cranes and derricks used in underground construction or demolition work. This action includes (i) amending the demolition standard by adding subparagraph headings and replacing the phrase "equipment used must" in both subsection (c) of §1926.856, Removal of Walls, Floors, and Material with

Equipment, and subsection (b) of §1926.858, Removal of Steel Construction, with a reference to the employer's duty to comply with all Subpart CC requirements to avoid the ambiguity; (ii) reinserting into §1926.858 the requirement to comply with Subpart N, in addition to Subpart CC of Part 1926 to clarify application of the provisions; and (iii) amending 16VAC25-150 (t)(1) through (t)(4) to include federal OSHA's required "as effective as" provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without requiring them to demonstrate that conventional means of access are more hazardous or impossible for this purpose.

Statement of Final Agency Action: On July 18, 2013, the Safety and Health Codes Board adopted (i) federal OSHA's final change to Underground Construction and Demolition in the Cranes and Derricks in Construction Standard, as published in 78 FR 23843 on April 23, 2013, and (ii) federal OSHA's required amendment to Virginia's unique regulation for underground construction, 16VAC25-150, with an effective date of November 1, 2013.

16VAC25-150-10. Underground construction; in general (29 CFR 1926.800).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Scope and application.

(1) This chapter applies to the construction of underground tunnels, shafts, chambers, and passageways. This chapter also applies to cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of this chapter, and covered in such a manner as to create conditions characteristic of underground construction. Except as otherwise provided, requirements of the Virginia Confined Space Standard for the Construction Industry, 16VAC25-140-10 et seq., that are more stringent than corresponding requirements in this chapter shall apply to underground construction areas which, while covered by this chapter, also meet the definition of "confined space" in 16VAC25-140-10.

(2) This chapter does not apply to the following:

(i) Excavation and trenching operations covered by Subpart P (16VAC25-175-1926.650 et seq.), such as foundation operations for above-ground structures that are not physically connected to underground construction operations, and surface excavation; nor

(ii) Underground electrical transmission and distribution lines, as addressed in Subpart V (16VAC25-175-1926.950 et seq.).

(b) Access and egress.

(1) The employer shall provide and maintain safe means of access and egress to all work stations.

(2) The employer shall provide access and egress in such a manner that employees are protected from being struck by excavators, haulage machines, trains and other mobile equipment.

(3) The employer shall control access to all openings to prevent unauthorized entry underground. Unused chutes, manways, or other openings shall be tightly covered, bulkheaded, or fenced off, and shall be posted with warning signs indicating "Keep Out" or similar language. Completed or unused sections of the underground facility shall be barricaded.

(c) Check-in/check-out. The employer shall maintain a check-in/check-out procedure that will ensure that above-ground personnel can determine an accurate count of the number of persons underground in the event of an emergency. However, this procedure is not required when the construction of underground facilities designed for human occupancy has been sufficiently completed so that the permanent environmental controls are effective, and when the remaining construction activity will not cause any environmental hazard or structural failure within the facilities.

(d) Safety instruction. All employees shall be instructed in the recognition and avoidance of hazards associated with underground construction activities including, where appropriate, the following subjects:

(1) Air monitoring;

(2) Ventilation;

(3) Illumination;

(4) Communications;

(5) Flood control;

(6) Mechanical equipment;

(7) Personal protective equipment;

(8) Explosives;

(9) Fire prevention and protection; and

(10) Emergency procedures, including evacuation plans and check-in/check-out systems.

(e) Notification.

(1) Oncoming shifts shall be informed of any hazardous occurrences or conditions that have affected or might affect employee safety, including liberation of gas, equipment failures, earth or rock slides, cave-ins, floodings, fires or explosions.

(2) The employer shall establish and maintain direct communications for coordination of activities with other employers whose operations at the jobsite affect or may affect the safety of employees underground.

(f) Communications.

(1) When natural unassisted voice communication is ineffective, a power-assisted means of voice

communication shall be used to provide communication between the work face, the bottom of the shaft, and the surface.

(2) Two effective means of communication, at least one of which shall be voice communication, shall be provided in all shafts which are being developed or used either for personnel access or for hoisting. Additional requirements for hoist operator communication are contained in paragraph (t)(3)(xiv) of this chapter.

(3) Powered communication systems shall operate on an independent power supply, and shall be installed so that the use of or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(4) Communication systems shall be tested upon initial entry of each shift to the underground, and as often as necessary at later times, to ensure that they are in working order.

(5) Any employee working alone underground in a hazardous location, who is both out of the range of natural unassisted voice communication and not under observation by other persons, shall be provided with an effective means of obtaining assistance in an emergency.

(g) Emergency provisions.

(1) Hoisting capability. When a shaft is used as a means of egress, the employer shall make advance arrangements for power-assisted hoisting capability to be readily available in an emergency, unless the regular hoisting means can continue to function in the event of an electrical power failure at the jobsite. Such hoisting means shall be designed so that the load hoist drum is powered in both directions of rotation and so that the brake is automatically applied upon power release or failure.

(2) Self-rescuers. The employer shall provide self-rescuers having current approval from the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration to be immediately available to all employees at work stations in underground areas where employees might be trapped by smoke or gas. The selection, issuance, use, and care of respirators shall be in accordance with paragraphs (b) and (c) of 16VAC25-175-1926.103 (Subpart E).

(3) Designated person. At least one designated person shall be on duty above ground whenever any employee is working underground. This designated person shall be responsible for securing immediate aid and keeping an accurate count of employees underground in case of emergency. The designated person must not be so busy with other responsibilities that the counting function is encumbered.

(4) Emergency lighting. Each employee underground shall have an acceptable portable hand lamp or cap lamp in his or her work area for emergency use, unless natural light or an emergency lighting system provides adequate illumination for escape.

(5) Rescue teams.

(i) On jobsites where 25 or more employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least two 5-person rescue teams, one on the jobsite or within one-half hour travel time from the entry point, and the other within 2 hours travel time.

(ii) On jobsites where less than 25 employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least one 5-person rescue team to be either on the jobsite or within one-half hour travel time from the entry point.

(iii) Rescue team members shall be qualified in rescue procedures, the use and limitations of breathing apparatus, and the use of fire fighting equipment. Qualifications shall be reviewed not less than annually.

(iv) On jobsites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using self-contained breathing apparatus monthly.

(v) The employer shall ensure that rescue teams are familiar with conditions at the jobsite.

(h) Hazardous classifications.

(1) Potentially gassy operations. Underground construction operations shall be classified as potentially gassy if either:

(i) Air monitoring discloses 10% or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) ±0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for more than a 24-hour period; or

(ii) The history of the geographical area or geological formation indicates that 10% or more of the lower explosive limit for methane or other flammable gases is likely to be encountered in such underground operations.

(2) Gassy operations. Underground construction operations shall be classified as gassy if:

(i) Air monitoring discloses 10% or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) ±0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for three consecutive days; or

(ii) There has been an ignition of methane or of other flammable gases emanating from the strata that indicates the presence of such gases; or

(iii) The underground construction operation is both connected to an underground work area which is currently classified as gassy and is also subject to a

continuous course of air containing the flammable gas concentration.

(3) Declassification to potentially gassy operations. Underground construction gassy operations may be declassified to Potentially Gassy when air monitoring results remain under 10% of the lower explosive limit for methane or other flammable gases for three consecutive days.

(i) Gassy operations-additional requirements.

(1) Only acceptable equipment, maintained in suitable condition, shall be used in gassy operations.

(2) Mobile diesel-powered equipment used in gassy operations shall be either approved in accordance with the requirements of 30 CFR Part 36 (formerly Schedule 31) by MSHA, or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that part.

(3) Each entrance to a gassy operation shall be prominently posted with signs notifying all entrants of the gassy classification.

(4) Smoking shall be prohibited in all gassy operations and the employer shall be responsible for collecting all personal sources of ignition, such as matches and lighters, from all persons entering a gassy operation.

(5) A fire watch as described in 16VAC25-175-1926.352(e) shall be maintained when hot work is performed.

(6) Once an operation has met the criteria in paragraph (h)(2) warranting classification as gassy, all operations in the affected area, except the following, shall be discontinued until the operation either is in compliance with all of the gassy operation requirements or has been declassified in accordance with paragraph (h)(3) of this section:

(i) Operations related to the control of the gas concentration;

(ii) Installation of new equipment, or conversion of existing equipment, to comply with this paragraph (i); and

(iii) Installation of above ground controls for reversing the air flow.

(j) Air quality and monitoring.

(1) General. Air quality limits and control requirements for construction are found in 16VAC25-175-1926.55, except as modified by this chapter.

(i) (a) The employer shall assign a competent person who shall perform all air monitoring required by this chapter.

(b) Where this paragraph requires monitoring of airborne contaminants "as often as necessary," the competent person shall make a reasonable determination as to which substances to monitor and how frequently to monitor, considering at least the following factors:

(1) Location of jobsite: Proximity to fuel tanks, sewers, gas lines, old landfills, coal deposits, and swamps;

(2) Geology: Geological studies of the jobsite, particularly involving the soil type and its permeability;

(3) History: Presence of air contaminants in nearby jobsites, changes in levels of substances monitored on the prior shift; and

(4) Work practices and jobsite conditions: The use of diesel engines, use of explosives, use of fuel gas, volume and flow of ventilation, visible atmospheric conditions, decompression of the atmosphere, welding, cutting and hot work, and employees physical reactions to working underground.

(ii) (a) The atmosphere in all underground work areas shall be tested as often as necessary to assure that the atmosphere as normal atmospheric pressure contains at least 19.5% oxygen and no more than 23% oxygen.

(b) Tests for oxygen content shall be made before tests for air contaminants.

(iii) (a) The atmosphere in all underground work areas shall be tested quantitatively for carbon monoxide, nitrogen dioxide, hydrogen sulfide, and other toxic gases, dusts, vapors, mists, and fumes as often as necessary to ensure that the permissible exposure limits prescribed in 16VAC25-175-1926.55 are not exceeded.

(b) The atmosphere in all underground work areas shall be tested quantitatively for methane and other flammable gases as often as necessary to determine:

(1) Whether action is to be taken under paragraphs (j)(1)(vii), (viii), and (ix), of this chapter; and

(2) Whether an operation is to be classified potentially gassy or gassy under paragraph (h) of this chapter.

(c) If diesel-engine or gasoline-engine driven ventilating fans or compressors are used, an initial test shall be made of the inlet air of the fan or compressor, with the engines operating, to ensure that the air supply is not contaminated by engine exhaust.

(d) Testing shall be performed as often as necessary to ensure that the ventilation requirements of paragraph (k) of this chapter are met.

(iv) When rapid excavation machines are used, a continuous flammable gas monitor shall be operated at the face with the sensor(s) placed as high and close to the front of the machine's cutter head as practicable.

(v) (a) Whenever air monitoring indicates the presence of 5 ppm or more of hydrogen sulfide, a test shall be conducted in the affected underground work area(s), at least at the beginning and midpoint of each shift, until the concentration of hydrogen sulfide has been less than 5 ppm for 3 consecutive days.

(b) Whenever hydrogen sulfide is detected in an amount exceeding 10 ppm, a continuous sampling and indicating

hydrogen sulfide monitor shall be used to monitor the affected work area.

(c) Employees shall be informed when a concentration of 10 ppm hydrogen sulfide is exceeded.

(d) The continuous sampling and indicating hydrogen sulfide monitor shall be designed, installed, and maintained to provide a visual and aural alarm when the hydrogen sulfide concentration reaches 20 ppm to signal that additional measure, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain hydrogen sulfide exposure below the permissible exposure limit.

(vi) When the competent person determines, on the basis of air monitoring results or other information, that air contaminants may be present in sufficient quantity to be dangerous to life, the employer shall:

(a) Prominently post a notice at all entrances to the underground jobsite to inform all entrants of the hazardous condition; and

(b) Ensure that the necessary precautions are taken.

(vii) Whenever ~~five%~~ 5.0% or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return, steps shall be taken to increase ventilation air volume or otherwise control the gas concentration, unless the employer is operating in accordance with the potentially gassy or gassy operation requirements. Such additional ventilation controls may be discontinued when gas concentrations are reduced below ~~five%~~ 5.0% of the lower explosive limit, but shall be reinstituted whenever the ~~five% lever~~ 5.0% level is exceeded.

(viii) Whenever 10% or more of the lower explosive limit for methane or other flammable gases is detected in the vicinity of welding, cutting, or other hot work, such work shall be suspended until the concentration of such flammable gas is reduced to less than 10% of the lower explosive limit.

(ix) Whenever 20% or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return:

(a) All employees, except those necessary to eliminate the hazard, shall be immediately withdrawn to a safe location above ground; and

(b) Electrical power, except for acceptable pumping and ventilation equipment, shall be cut off to the area endangered by the flammable gas until the concentration of such gas is reduced to less than 20% of the lower explosive limit.

(2) Additional monitoring for potentially gassy and gassy operations. Operations which met the criteria for potentially gassy and gassy operations set forth in paragraph (h) of this section shall be subject to the additional monitoring requirements of this paragraph.

(i) A test for oxygen content shall be conducted in the affected underground work areas and work areas immediately adjacent to such areas at least at the beginning and midpoint of each shift.

(ii) When using rapid excavation machines, continuous automatic flammable gas monitoring equipment shall be used to monitor the air at the heading, on the rib, and in the return air duct. The continuous monitor shall signal the heading, and shut down electric power in the affected underground work area, except for acceptable pumping and ventilation equipment, when 20% or more of the lower explosive limit for methane or other flammable gases is encountered.

(iii) A manual flammable gas monitor shall be used as needed, but at least at the beginning and midpoint of each shift, to ensure that the limits prescribed in paragraphs (h) and (j) are not exceeded. In addition, a manual electrical shut down control shall be provided near the heading.

(iv) Local gas tests shall be made prior to and continuously during any welding, cutting, or other hot work.

(v) In underground operations driven by drill-and-blast methods, the air in the affected area shall be tested for flammable gas prior to reentry after blasting, and continuously when employees are working underground.

(3) Record keeping. A record of all air quality tests shall be maintained above ground at the worksite and be made available to the Commissioner of the Department of Labor and Industry upon request. The record shall include the location, date, time, substance and amount monitored. Records of exposures to toxic substances shall be retained in accordance with 16VAC25-80-10 et seq. All other air quality test records shall be retained until completion of the project.

(k) Ventilation.

(1) (i) Fresh air shall be supplied to all underground work areas in sufficient quantities to prevent dangerous or harmful accumulation of dusts, fumes, mists, vapors or gases.

(ii) Mechanical ventilation shall be provided in all underground work areas except when the employer can demonstrate that natural ventilation provides the necessary air quality through sufficient air volume and air flow.

(2) A minimum of 200 cubic feet (5.7 m^3) or fresh air per minute shall be supplied for each employee underground.

(3) The linear velocity of air flow in the tunnel bore, in shafts, and in all other underground work areas shall be at least 30 feet (9.15 m) per minute where blasting or rock drilling is conducted, or where other conditions likely to produce dust, fumes, mists, vapors, or gases in harmful or explosive quantities are present.

(4) The direction of mechanical air flow shall be reversible.

(5) Following blasting, ventilation systems shall exhaust smoke and fumes to the outside atmosphere before work is resumed in affected areas.

(6) Ventilation doors shall be designed and installed so that they remain closed when in use, regardless of the direction of the air flow.

(7) When ventilation has been reduced to the extent that hazardous levels of methane or flammable gas may have accumulated, a competent person shall test all affected areas after ventilation has been restored and shall determine whether the atmosphere is within flammable limits before any power, other than for acceptable equipment, is restored or work is resumed.

(8) Whenever the ventilation system has been shut down with all employees out of the underground area, only competent persons authorized to test for air contaminants shall be allowed underground until the ventilation has been restored and all affected areas have been tested for air contaminants and declared safe.

(9) When drilling rock or concrete, appropriate dust control measures shall be taken to maintain dust levels within limits set in 16VAC25-175-1926.55. Such measures may include, but are not limited to, wet drilling, the use of vacuum collectors, and water mix spray systems.

(10) (i) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground.

(ii) Mobile diesel-powered equipment used underground in atmospheres other than gassy operations shall be either approved by MSHA in accordance with the provisions of 30 CFR Part 32 (formerly Schedule 24), or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that Part. (Each brake horsepower of a diesel engine requires at least 100 cubic feet (28.32 m^3) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

(11) Potentially gassy or gassy operations shall have ventilation systems installed which shall:

(i) Be constructed of fire-resistant materials; and

(ii) Have acceptable electrical systems, including fan motors.

(12) Gassy operations shall be provided with controls located above ground for reversing the air flow of ventilation systems.

(13) In potentially gassy or gassy operations, wherever mine-type ventilation systems using an offset main fan installed on the surface are used, they shall be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway.

(l) Illumination.

(1) Illumination requirements applicable to underground construction operations are found in Table D-3 of 16VAC25-175-1926.56.

(2) Only acceptable portable lighting equipment shall be used within 50 feet (15.24 m) of any underground heading during explosives handling.

(m) Fire prevention and control. Fire prevention and protection requirements applicable to underground construction operations are found in Subpart F of this part (16VAC25-175-1926.150 et seq.), except as modified by the following additional standards.

(1) Open flames and fires are prohibited in all underground construction operations except as permitted for welding, cutting and other hot work operations in paragraph (n) of this chapter.

(2) (i) Smoking may be allowed only in areas free of fire and explosion hazards.

(ii) Readily visible signs prohibiting smoking and open flames shall be posted in areas having fire or explosion hazards.

(3) The employer may store underground no more than a 24-hour supply of diesel fuel for the underground equipment used at the worksite.

(4) The piping of diesel fuel from the surface to an underground location is permitted only if:

(i) Diesel fuel is contained at the surface in a tank whose maximum capacity is no more than the amount of fuel required to supply for a 24-hour period the equipment serviced by the underground fueling station; and

(ii) The surface tank is connected to the underground fueling station by an acceptable pipe or hose system that is controlled at the surface by a valve, and at the shaft bottom by a hose nozzle; and

(iii) The pipe is empty at all times except when transferring diesel fuel from the surface tank to a piece of equipment in use underground; and

(iv) Hoisting operations in the shaft are suspended during refueling operations if the supply piping in the shaft is not protected from damage.

(5) (i) Gasoline shall not be carried, stored, or used underground.

(ii) Acetylene, liquefied petroleum gas, and Methylacetylene Propadiene Stabilized gas may be used underground only for welding, cutting and other hot work, and only in accordance with Subpart J of this part (16VAC25-175-1926.350 et seq.), and paragraphs (j), (k), (m), and (n) of this chapter.

(6) Oil, grease, and diesel fuel stored underground shall be kept in tightly sealed containers in fire-resistant areas at least 300 feet (91.44 m) from underground explosive magazines, and at least 100 feet (30.48 m) from shaft stations and steeply inclined passageways. Storage areas shall be positioned or diked so that the contents of ruptured or overturned containers will not flow from the storage area.

(7) Flammable or combustible materials shall not be stored above ground within 100 feet (30.48 m) of any access opening to any underground operation. Where this is not feasible because of space limitations at the jobsite, such materials may be located within the 100-foot limit, provided that:

(i) They are located as far as practicable from the opening; and

(ii) Either a fire-resistant barrier of not less than one-hour rating is placed between the stored material and the opening, or additional precautions are taken which will protect the materials from ignition sources.

(8) Fire-resistant hydraulic fluids shall be used in hydraulically-actuated underground machinery and equipment unless such equipment is protected by a fire suppression system or by multi-purpose fire extinguisher(s) rated at of sufficient capacity for the type and size of hydraulic equipment involved, but rated at least 4A:40B:C.

(9) (i) Electrical installations in underground areas where oil, grease, or diesel fuel are stored shall be used only for lighting fixtures.

(ii) Lighting fixtures in storage areas, or within 25 feet (7.62 m) of underground areas where oil, grease, or diesel fuel are stored, shall be approved for Class I, Division 2 locations, in accordance with Subpart K of this part (16VAC25-175-1926.400 et seq.).

(10) Leaks and spills of flammable or combustible fluids shall be cleaned up immediately.

(11) A fire extinguisher of at least 4A:40B:C rating or other equivalent extinguishing means shall be provided at the head pulley and at the tail pulley of underground belt conveyors.

(12) Any structure located underground or within 100 feet (30.48 m) of an opening to the underground shall be constructed of material having a fire-resistance rating of at least one hour.

(n) Welding, cutting, and other hot work. In addition to the requirements of Subpart J of this part (16VAC25-175-1926.350 et seq.), the following requirements shall apply to underground welding, cutting, and other hot work.

(1) No more than the amount of fuel gas and oxygen cylinders necessary to perform welding, cutting, or other hot work during the next 24-hour period shall be permitted underground.

(2) Noncombustible barriers shall be installed below welding, cutting, or other hot work being done in or over a shaft or raise.

(o) Ground support.

(1) Portal areas. Portal openings and access areas shall be guarded by shoring, fencing, head walls, shotcreting or other equivalent protection to ensure safe access of employees and equipment. Adjacent areas shall be scaled or otherwise secured to prevent loose soil, rock, or fractured materials from endangering the portal and access area.

(2) Subsidence areas. The employer shall ensure ground stability in hazardous subsidence areas by shoring, by filling in, or by erecting barricades and posting warning signs to prevent entry.

(3) Underground areas.

(i) (a) A competent person shall inspect the roof, face, and walls of the work area at the start of each shift and as often as necessary to determine ground stability.

(b) Competent persons conducting such inspections shall be protected from loose ground by location, ground support or equivalent means.

(ii) Ground conditions along haulageways and travelways shall be inspected as frequently as necessary to ensure safe passage.

(iii) Loose ground that might be hazardous to employees shall be taken down, scaled or supported.

(iv) (a) Torque wrenches shall be used wherever bolts that depend on torsionally applied force are used for ground support.

(b) A competent person shall determine whether rock bolts meet the necessary torque, and shall determine the testing frequency in light of the bolt system, ground conditions and the distance from vibration sources.

(v) Suitable protection shall be provided for employees exposed to the hazard of loose ground while installing ground support systems.

(vi) Support sets shall be installed so that the bottoms have sufficient anchorage to prevent ground pressures from dislodging the support base of the sets. Lateral bracing (collar bracing, tie rods, or spreaders) shall be provided between immediately adjacent sets to ensure added stability.

(vii) Damaged or dislodged ground supports that create a hazardous condition shall be promptly repaired or replaced. When replacing supports, the new supports shall be installed before the damaged supports are removed.

(viii) A shield or other type of support shall be used to maintain a safe travelway for employees working in dead-end areas ahead of any support replacement operation.

(4) Shafts.

(i) Shafts and wells over 5 feet (1.53 m) in depth that employees must enter shall be supported by a steel casing, concrete pipe, timber, solid rock or other suitable material.

(ii) (a) The full depth of the shaft shall be supported by casing or bracing except where the shaft penetrates into solid rock having characteristics that will not change as a result of exposure. Where the shaft passes through earth into solid rock, or through solid rock into earth, and where there is potential for shear, the casing or bracing shall extend at least 5 feet (1.53 m) into the solid rock. When the shaft terminates in solid rock, the casing or bracing shall extend to the end of the shaft or 5 feet (1.53 m) into the solid rock, whichever is less.

(b) The casing or bracing shall extend 42 inches (1.07 m) plus or minus 3 inches (8 cm) above ground level, except that the minimum casing height may be reduced to 12 inches (0.3 m), provided that a standard railing is installed; that the ground adjacent to the top of the shaft is sloped away from the shaft collar to prevent entry of liquids; and that effective barriers are used to prevent mobile equipment operating near the shaft from jumping over the 12 inch (0.3 m) barrier.

(iii) After blasting operations in shafts, a competent person shall determine if the walls, ladders, timbers, blocking, or wedges have loosened. If so, necessary repairs shall be made before employees other than those assigned to make the repairs are allowed in or below the affected areas.

(p) Blasting. This paragraph applies in addition to the requirements for blasting and explosives operations, including handling of misfires, which are found in Subpart U of this part (16VAC25-175-1926.900 et seq.).

(1) Blasting wires shall be kept clear of electrical lines, pipes, rails, and other conductive material, excluding earth, to prevent explosives initiation or employee exposure to electric current.

(2) Following blasting, an employee shall not enter a work area until the air quality meets the requirements of paragraph (j) of this chapter.

(q) Drilling.

(1) A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety shall be corrected before the equipment is used.

(2) The drilling area shall be inspected for hazards before the drilling operation is started.

(3) Employees shall not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.

(4) When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast shall be placed in a safe position.

(5) Receptacles or racks shall be provided for storing drill steel located on jumbos.

(6) Employees working below jumbo decks shall be warned whenever drilling is about to begin.

(7) Drills on columns shall be anchored firmly before starting drilling, and shall be retightened as necessary thereafter.

(8) (i) The employer shall provide mechanical means on the top deck of a jumbo for lifting unwieldy or heavy material.

(ii) When jumbo decks are over 10 feet (3.05 m) in height, the employer shall install stairs wide enough for two persons.

(iii) Jumbo decks more than 10 feet (3.05 m) in height shall be equipped with guardrails on all open sides, excluding access openings of platforms, unless an adjacent surface provides equivalent fall protection.

(iv) (a) Only employees assisting the operator shall be allowed to ride on jumbos, unless the jumbo meets the requirements of paragraph (r)(6)(ii) of this chapter.

(b) Jumbos shall be chocked to prevent movement while employees are working on them.

(v) (a) Walking and working surfaces of jumbos shall be maintained to prevent the hazards of slipping, tripping and falling.

(b) Jumbo decks and stair treads shall be designed to be slip-resistant and secured to prevent accidental displacement.

(9) Scaling bars shall be available at scaling operations and shall be maintained in good condition at all times. Blunted or severely worn bars shall not be used.

(10) (i) Blasting holes shall not be drilled through blasted rock (muck) or water.

(ii) Employees in a shaft shall be protected either by location or by suitable barrier(s) if powered mechanical loading equipment is used to remove muck containing unfired explosives.

(11) A caution sign reading "Buried Line," or similar wording shall be posted where air lines are buried or otherwise hidden by water or debris.

(r) Haulage

(1) (i) A competent person shall inspect haulage equipment before each shift.

(ii) Equipment defects affecting safety and health shall be corrected before the equipment is used.

(2) Powered mobile haulage equipment shall have suitable means of stopping.

(3) (i) Power mobile haulage equipment, including trains, shall have audible warning devices to warn employees to stay clear. The operator shall sound the warning device before moving the equipment and whenever necessary during travel.

(ii) The operator shall assure that lights which are visible to employees at both ends of any mobile equipment, including a train, are turned on whenever the equipment is operating.

(4) In those cabs where glazing is used, the glass shall be safety glass, or its equivalent, and shall be maintained and cleaned so that vision is not obstructed.

(5) Anti-roll back devices or brakes shall be installed on inclined conveyor drive units to prevent conveyors from inadvertently running in reverse.

(6) (i) (a) Employees shall not be permitted to ride a power-driven chain, belt, or bucket conveyor unless the conveyor is specifically designed for the transportation of persons.

(b) Endless belt-type manlifts are prohibited in underground construction.

(c) General requirements also applicable to underground construction for use of conveyors in construction are found in 16VAC25-175-1926.555.

(ii) No employee shall ride haulage equipment unless it is equipped with seating for each passenger and protects passengers from being struck, crushed, or caught between other equipment or surfaces. Members of train crews may ride on a locomotive if it is equipped with handholds and nonslip steps or footboards. Requirements applicable to Underground Construction for motor vehicle transportation of employees are found in 16VAC25-175-1926.601.

(7) Powered mobile haulage equipment, including trains, shall not be left unattended unless the master switch or motor is turned off; operating controls are in neutral or park position; and the brakes are set, or equivalent precautions are taken to prevent rolling.

(8) Whenever rails serve as a return for a trolley circuit, both rails shall be bonded at every joint and crossbonded every 200 feet (60.96 m).

(9) When dumping cars by hand, the car dumps shall have tiedown chains, bumper blocks, or other locking or holding devices to prevent the cars from overturning.

(10) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices to prevent unintended dumping.

(11) Equipment to be hauled shall be loaded and secured to prevent sliding or dislodgement.

(12) (i) Mobile equipment, including rail-mounted equipment, shall be stopped for manual connecting or service work.

(ii) Employees shall not reach between moving cars during coupling operations.

(iii) Couplings shall not be aligned, shifted or cleaned on moving cars or locomotives.

(13) (i) Safety chains or other connections shall be used in addition to couplers to connect man cars or powder cars whenever the locomotive is uphill of the cars.

(ii) When the grade exceeds one percent and there is a potential for runaway cars, safety chains or other connections shall be used in addition to couplers to connect haulage cars or, as an alternative, the locomotive must be downhill of the train.

(iii) Such safety chains or other connections shall be capable of maintaining connection between cars in the event of either coupler disconnect, failure or breakage.

(14) Parked rail equipment shall be chocked, blocked, or have brakes set to prevent inadvertent movement.

(15) Berms, bumper blocks, safety hooks, or equivalent means shall be provided to prevent overtravel and overturning of haulage equipment at dumping locations.

(16) Bumper blocks or equivalent stopping devices shall be provided at all track dead ends.

(17) (i) Only small hand tools, lunch pails or similar small items may be transported with employees in mancars, or on top of a locomotive.

(ii) When small hand tools or other small items are carried on top of a locomotive, the top shall be designed or modified to retain them while traveling.

(18) (i) Where switching facilities are available, occupied personnel-cars shall be pulled, not pushed. If personnel-cars must be pushed and visibility of the track ahead is hampered, then a qualified person shall be stationed in the lead car to give signals to the locomotive operator.

(ii) Crew trips shall consist of personnel-loads only.

(s) Electrical safety. This paragraph applies in addition to the general requirements for electrical safety which are found in Subpart K of this part (16VAC25-175-1926.400 et seq.).

(1) Electric power lines shall be insulated or located away from water lines, telephone lines, air lines, or other conductive materials so that a damaged circuit will not energize the other systems.

(2) Lighting circuits shall be located so that movement of personnel or equipment will not damage the circuits or disrupt service.

(3) Oil-filled transformers shall not be used underground unless they are located in a fire-resistant enclosure suitably vented to the outside and surrounded by a dike to retain the contents of the transformers in the event of rupture.

~~(t) Hoisting unique to underground construction. Except as modified by this paragraph (t), the following provisions of Subpart N of this part (16VAC25-175-1926.550 et seq.)~~

apply: Requirements for cranes are found in 16VAC25-175-1926.550. Paragraph (g) of 16VAC25-175-1926.550 applies to crane hoisting of personnel, except that the limitation in paragraph (g)(2) does not apply to the routine access of employees to the underground via a shaft. Requirements for material hoists are found in 16VAC25-175-1926.552(a) and (b). Requirements for personnel hoists are found in the personnel hoist requirements of 16VAC25-175-1926.552(a) and (c) and in the elevator requirement of 16VAC25-175-1926.552(a) and (d).

(1) General requirements for cranes and hoists.

(i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv) (a) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the are shall be informed and given suitable instructions.

(b) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open throat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) Additional requirements for cranes. Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) Additional requirements for hoists.

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking of the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the

~~operator can communicate with individual landing stations during hoist use.~~

~~(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.~~

~~(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.~~

~~(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail guided for the full length of their travel.~~

~~(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to 16VAC25-175-1926.552(c)(14)(iii) for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.~~

~~(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.~~

~~(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.~~

~~(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load tested to 100% of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.~~

~~(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.~~

~~(xxiii) Unsafe conditions shall be corrected before using the equipment.~~

~~(4) Additional requirements for personnel hoists.~~

~~(i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150% of the hoist's rated line pull. A broken rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.~~

~~(ii) The operator shall remain within sight and sound of the signals at the operator's station.~~

~~(iii) All sides of personnel cages shall be enclosed by one half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.~~

~~(iv) All personnel cages shall be provided with positive locking door that does not open outward.~~

~~(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16 inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.~~

~~(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken rope safety devices, safety catches or arrestment devices that will stop and hold 150% of the weight of the personnel platform and its maximum rated load.~~

~~(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.~~

~~(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.~~

~~(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.~~

(t) Hoisting unique to underground construction. Except as modified by this paragraph (t), employers must comply with the requirements of Subpart CC of 29 CFR 1926, except that the limitation in 16VAC25-175-1926.1431(a) does not apply to the routine access of employees to an underground worksite via a shaft; ensure that material hoists comply with 16VAC25-175-1926.552(a) and (b); and ensure that personnel hoists comply with the personnel-hoists requirements of 16VAC25-175-1926.552(a) and (c) and the elevator requirements of 16VAC25-175-1926.552(a) and (d).

(1) General requirements for cranes and hoists.

(i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging, or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv) (A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched openthroat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) Additional requirements for cranes. Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) Additional requirements for hoists.

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type," which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip, or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the operator can communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails or ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to 16VAC25-175-1926.552(c)(14)(iii) for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100% of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) Additional requirements for personnel hoists.

(i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150% of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph (t).

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by 1-2 inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches, or arrestment devices that will stop and hold 150% of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

(u) Definitions. "Accept" - Any device, equipment, or appliance that is either approved by MSHA and maintained in permissible condition, or is listed or labeled for the class and location under Subpart K of this part.

"Rapid excavation machine" - Tunnel boring machines, shields, roadheaders, or any other similar excavation machine.

(Information collection requirements contained in paragraphs (j)(1), (j)(2), and (j)(3) were approved by the Office of Management and Budget under control number 1218-0067)

EDITOR'S NOTE for 16VAC25-175-1926.856 and 16VAC25-175-1926.858: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR 1926.856 and 29 CFR 1926.858 are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these CFR sections will not be printed in the Virginia Register of Regulations. Copies of these CFR sections are available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar

of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Federal Terms and State Equivalents: When the regulations as set forth in the final rule for Cranes and Derricks in Construction: Underground Construction and Demolition are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
May 23, 2013	November 1, 2013

VA.R. Doc. No. R14-3832; Filed August 20, 2013, 3:17 p.m.

Final Regulation

Title of Regulation: **16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC175-1926.952, 16VAC25-176-1926.1400).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: November 1, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Federal OSHA (i) expanded the digger-derrick exemption in the Cranes and Derricks in Construction Standard to make all digger derricks used in construction work subject to Subpart V of 29 CFR Part 1926 and clarified the text of the digger-derrick exemption; and (ii) revised the Power Transmission and Distribution Standard to require digger derricks to comply with 29 CFR 1926.269.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On July 18, 2013, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, as published in 78 FR 32116 on May 29, 2013, with an effective date of November 1, 2013.

Federal Terms and State Equivalents: When the regulations as set forth in the Final Rule for Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
June 28, 2013	November 1, 2013

VA.R. Doc. No. R14-3833; Filed August 20, 2013, 3:21 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

REGISTRAR'S NOTICE: Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to administration of auxiliary grants and provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. The following action relocates the Department of Social Services' regulations numbered 22VAC40-740, 22VAC40-745, and 22VAC40-771 to the Department for Aging and Rehabilitative Services and renumbers those regulations as 22VAC30-100, 22VAC30-110, and 22VAC30-120, respectively.

This regulatory action is excluded 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 Department for Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: **22VAC30-100. Adult Protective Services (adding 22VAC30-100-10 through 22VAC30-100-80).**

Statutory Authority: § 51.5-131 of the Code of Virginia; 42 USC § 1397(3).

Effective Date: October 9, 2013.

Agency Contact: Paige L. McCleary, Adult Services Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

Summary:

The amendments reflect changes made by Chapters 803 and 835 of the 2012 Acts of Assembly regarding the relocation of the adult protective services regulations from the Department of Social Services (DSS) to the Department for Aging and Rehabilitative Services (DARS). The amendments update the agency name from DSS to DARS, change the chapter and section numbers so that the regulation appears under DARS in the Virginia Administrative Code, and update cross references.

CHAPTER ~~740~~ 100
ADULT PROTECTIVE SERVICES

~~22VAC40-740-10.~~ 22VAC30-100-10. Definitions.

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means the receipt, investigation and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and over who are incapacitated and adults 60 years of age and over by the local department of social services. Adult protective services also include the provision of casework and care management by the local department in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the local department or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements and other activities to protect the adult and restore self-sufficiency to the extent possible.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect or exploitation or whose involvement may help ensure the safety of the adult.

"Commissioner" means the commissioner of the department.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Department" means the Virginia Department ~~of Social Services~~ for Aging and Rehabilitative Services.

"Director" means the director or his delegated representative of the department of social services of the city or county in which the adult resides or is found.

"Disposition" means the determination of whether or not adult abuse, neglect or exploitation has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity, the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult, misuse of funds, acquiring an advantage through threats to withhold needed support or care unless certain conditions are met, or persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of a local department of social services social worker that an adult is unable to consent to receive needed services for

reasons that relate to emotional or psychiatric problems, intellectual disability, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a mental condition which renders him incapable of taking care of his person or managing his estate.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required to report pursuant to § 63.2-1606 of the Code of Virginia when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of adult abuse, neglect, or exploitation.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, cause sorrow or fear, humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's activity that has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is written or oral expression of consent by that adult. Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a person's health;

2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;

3. Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating conditions;

4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;

5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;

6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and

7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Notification" means informing designated and appropriate individuals of the local department's action and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Report" means an allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the local department or by calling the Adult Protective Services Hotline.

"Service plan" means a plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect or exploitation, and to preserve the autonomy of the adult whenever possible.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no

emergency and for reasons other than the adult's safety or well-being or the safety of others.

"Valid report" means the local department of social services has evaluated the information and allegations of the report and determined that the local department shall conduct an investigation because all of the following elements are present:

1. The alleged victim adult is 60 years of age or older or is 18 years of age or older and is incapacitated;

2. There is a specific adult with enough identifying information to locate the adult;

3. Circumstances allege abuse, neglect or exploitation or risk of abuse, neglect or exploitation; and

4. The local department receiving the report is a local department of jurisdiction as described in ~~22VAC40-740-21~~ 22VAC30-100-20.

"Voluntary protective services" means those services provided to an adult who, after investigation by a local department, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation.

~~22VAC40-740-15.~~ 22VAC30-100-15. Mandated reporters.

Reports shall be made forthwith by the following persons acting in their professional capacity upon their suspicion that adult abuse, neglect or exploitation has occurred:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia, unless such personnel immediately reports the suspected abuse, neglect, or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation including, but not limited to, companion, chore, homemaker, and personal care workers;

7. Any law-enforcement officer; and

8. Medical facilities inspectors of the Department of Health. However, medical facilities inspectors are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with Title XVIII (§ 1846) and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123 of the Code of Virginia. Findings of adult abuse, neglect or exploitation by a medical facilities inspector shall be made known to adult protective services after the exit conference at the facility so that the local department can provide follow up to facility residents who may be at risk of further abuse, neglect or exploitation.

~~22VAC40-740-21.~~ 22VAC30-100-20. ~~The adult~~ Adult protective services investigation.

A. This section establishes the process for the adult protective services investigation and provides priority to situations that are most critical.

B. The validity of the report shall be determined. Investigations shall be initiated by the local department not later than 24 hours from the time a valid report was received in the local department.

1. To initiate the investigation, the social worker must gather enough information concerning the report to determine (i) if the report is valid and (ii) if an immediate response is needed to ensure the safety of the alleged victim. Pertinent information may be obtained from the report, case record reviews, contact with the alleged victim, the reporter, friends and neighbors and service providers.

2. When determining the need for an immediate response, the social worker shall consider the following factors:

a. The imminent danger to the adult or to others;

b. The severity of the alleged abuse, neglect or exploitation;

c. The circumstances surrounding the alleged abuse, neglect or exploitation; and

d. The physical and mental condition of the adult.

3. A face-to-face contact with the alleged victim shall be made as soon as possible but not later than five calendar days after the initiation of the investigation unless there are valid reasons that the contact could not be made. Those reasons shall be documented in the Adult Protective Services Assessment Narrative as described in ~~22VAC40-740-40~~ 22VAC30-100-40. The timing of the interview with the alleged victim should occur in a reasonable amount of time pursuant to circumstances in subdivision 2 of this subsection.

C. The report shall be reduced to writing within 72 hours of receiving the report on a form prescribed by the department.

D. The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify services needed to provide the protection.

E. The local department shall conduct a thorough investigation of the report.

F. The investigation shall include a visit and private interview with the adult alleged to be abused, neglected or exploited.

G. The investigation shall include consultation with others having knowledge of the facts of the particular case.

H. Primary responsibility for the investigation when more than one local department may have jurisdiction under § 63.2-1605 of the Code of Virginia shall be assumed by the local department:

1. Where the subject of the investigation resides when the place of residence is known and when the alleged abuse, neglect or exploitation occurred in the city or county of residence;

2. Where the abuse, neglect or exploitation is believed to have occurred when the report alleges that the incident occurred outside the city or county of residence;

3. Where the abuse, neglect or exploitation was discovered if the incident did not occur in the city or county of residence or if the city or county of residence is unknown and the place where the abuse, neglect or exploitation occurred is unknown; or

4. Where the abuse, neglect or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.

I. When an investigation extends across city or county lines, local departments in those cities or counties shall assist with the investigation at the request of the local department with primary responsibility.

J. When the local department receives information on suspicious deaths of adults, local department staff shall immediately notify the appropriate medical examiner and law enforcement.

~~22VAC40-740-31.~~ 22VAC30-100-30. Application for the provision of services.

A. Local departments are authorized to receive and investigate reports of suspected adult abuse, neglect and exploitation pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 of the Code of Virginia.

B. Upon completion of the investigation and the determination that the adult is in need of protective services, the adult protective services worker must obtain an application signed by the adult in need of services or his representative prior to service provision.

C. The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.

D. Persons who may complete and sign an application for adult protective services on behalf of an adult who needs the service include:

1. The adult who will receive the services or the adult's legally appointed guardian or conservator;

2. Someone authorized by the adult; or

3. The local department.

~~22VAC40-740-40.~~ 22VAC30-100-40. Assessment ~~and~~ narrative ~~and~~ disposition.

A. An assessment narrative shall be required for all adult protective services investigations and shall be titled "Adult Protective Services Assessment Narrative." The narrative must address, but is not limited to, the following:

1. Allegations in the report or circumstances discovered during the investigation that meet the definitions of abuse, neglect or exploitation.

2. The extent to which the adult is physically, emotionally and mentally capable of making and carrying out decisions concerning his health and well-being.

3. The risk of serious harm to the adult.

4. The need for an immediate response by the adult protective services worker upon receipt of a valid report.

5. The ability to conduct a private interview with the alleged victim, the alleged perpetrator (if known) and any collateral contacts having knowledge of the case.

B. After investigating the report, the adult protective services worker must review and evaluate the facts collected and make a disposition as to whether the adult is in need of protective services and, if so, what services are needed.

C. The disposition that the adult needs protective services shall be based on the preponderance of evidence that abuse, neglect or exploitation has occurred or that the adult is at risk of abuse, neglect or exploitation.

D. Possible dispositions.

1. Needs protective services. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring;

b. A review of the facts shows a preponderance of evidence that the adult is at risk of abuse, neglect or exploitation and needs protective services in order to reduce that risk;

c. The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia; or

d. Involuntary services are ordered by the court pursuant to § 63.2-1609 or Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.

2. Needs protective services and refuses. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring or the adult is at risk of abuse, neglect and exploitation; and

b. The adult refuses or withdraws consent to accept protective services pursuant to § 63.2-1610 of the Code of Virginia.

3. Need for protective services no longer exists. This disposition shall be used when the subject of the report no longer needs protective services. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred. However, at the time the investigation is initiated or during the course of the investigation, the adult who is the subject of the report ceases to be at risk of further abuse, neglect or exploitation.

4. Unfounded. This disposition shall be used when review of the facts does not show a preponderance of evidence that abuse, neglect or exploitation occurred or that the adult is at risk of abuse, neglect or exploitation.

E. The investigation shall be completed and a disposition assigned by the local department within 45 days of the date the report was received. If the investigation is not completed within 45 days, the record shall document reasons.

F. A notice of the completion of the investigation must be made in writing and shall be mailed to the reporter within 10 working days of the completion of the investigation.

G. The Adult Protective Services Program shall respect the rights of adults with capacity to consider options offered by the program and refuse services, even if those decisions do not appear to reasonably be in the best interests of the adult.

~~22VAC40-740-50.~~ 22VAC30-100-50. Disclosure of adult protective services information.

A. This chapter describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local department, what information may be disclosed, and the procedure for disclosing the information.

B. Department staff having legitimate interest shall have regular access to adult protective services records maintained by the local department.

C. The following agencies have licensing, regulatory and legal authority for administrative action or criminal investigations, and they have a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory and legal responsibilities:

1. Department of Behavioral Health and Developmental Services;

2. Virginia Office for Protection and Advocacy;

3. Office of the Attorney General, including the Medicaid Fraud Control Program;

4. Department for Aging and Rehabilitative Services;

5. Department of Health, including the Center for Quality Health Care Services and Consumer Protection and the Office of the Chief Medical Examiner;

6. Department of Medical Assistance Services;

7. Department of Health Professions;

8. Department for the Blind and Vision Impaired;

9. Department of Social Services, including the Division of Licensing Programs;

10. The Office of the State Long-Term Care Ombudsman and local ombudsman;

11. Law-enforcement agencies;

12. Medical examiners;

13. Adult fatality review teams;

14. Prosecutors; and

15. Any other entity deemed appropriate by the commissioner or local department director that demonstrates a legitimate interest.

D. The local department shall disclose all relevant information to representatives of the agencies identified in subsection C of this section except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

E. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory or legal authority for administrative action or criminal investigation.

F. Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in accordance with § 63.2-104 of the Code of Virginia and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;

2. A physician who is treating an adult whom he reasonably suspects is abused, neglected or exploited;

3. The adult's legally appointed guardian or conservator;

4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;

5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;

6. An attorney representing a local department in an adult protective services case;

7. The Social Security Administration; or

8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident.

G. Local departments are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;

2. When a person has made an adult protective services report and an investigation has been completed; or

3. When a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia).

H. Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in subsection F of this section:

1. Name, address, age, race, and gender of the adult who is the subject of the request for information;

2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;

3. Description of the incident or incidents of abuse, neglect, or exploitation;

4. Description of medical problems to the extent known;

5. Disposition of the adult protective services report; and

6. The protective service needs of the adult.

I. The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

J. Agencies or persons who receive confidential information pursuant to subsection G of this section shall provide the following assurances to the local department:

1. The purpose for which information is requested is related to the protective services goal in the service plan for the adult;

2. The information will be used only for the purpose for which it is made available; and

3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law.

K. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection J of this section:

1. Agreements between local departments and other community service agencies that provide blanket assurances required in subsection J of this section for all adult protective services cases; or

2. State-level agreements that provide blanket assurances required in subsection C of this section for all adult protective services cases.

L. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

~~22VAC40-740-60.~~ 22VAC30-100-60. Opening a case for service provision.

A. A range of services must be made available to any abused, neglected and exploited adult or to adults at risk of abuse, neglect or exploitation to protect the adult and to prevent any future abuse, neglect or exploitation.

1. Opening a case to adult protective services. Once a disposition of the report and an assessment of the adult's needs and strengths have been made, the department shall assess the adult's service needs. A case shall be opened for adult protective services when:

a. The service needs are identified;

b. The disposition is that the adult needs protective services; and

c. The adult agrees to accept protective services or protective services are ordered by the court.

2. Service planning. A service plan which is based on the investigative findings and the assessment of the adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the adult, and other persons will undertake to provide the services necessary to protect the adult.

3. Implementation of the service plan. Implementation of the service plan is the delivery of the services necessary to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through informal support, or through referral. The continuous monitoring of the adult's progress and the system's response is a part of the implementation.

4. Local departments are required to provide services beyond the investigation to the extent that federal or state matching funds are made available.

~~22VAC40-740-70.~~ 22VAC30-100-70. Civil penalty for nonreporting.

A. The department may impose civil penalties when it is determined that a mandated reporter failed to report suspected adult abuse, neglect or exploitation pursuant to § 63.2-1606 of the Code of Virginia.

B. Civil penalties for all mandated reporters except law-enforcement officers shall be imposed as described in ~~22VAC40-740-80~~ 22VAC30-100-80.

~~22VAC40-740-80.~~ 22VAC30-100-80. Imposition of civil penalty.

A. Local department review and recommendation.

1. Based on a decision by the local department director or his designee that a mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the local director shall prepare a written statement of fact concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner.

2. The local director or his designee shall notify the mandated reporter in writing within 15 calendar days from

the date of the determination of the intent to recommend that a civil penalty be imposed. The notification will include a copy of the local director's statement of fact concerning the mandated reporter's failure to report. The notification shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the notification is the postage date.

3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner

B. Review by the commissioner or his designee.

1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.

2. In the case of law-enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.

3. The commissioner or his designee shall impose a civil penalty upon a mandated reporter who is determined to have not reported as required pursuant to § 63.2-1606 of the Code of Virginia. Penalties shall be imposed as follows:

a. For first offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not more than $500.

b. For second and subsequent offenses pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not less than $100 and not more than $1,000.

4. The commissioner or his designee shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. This written notice shall describe the reasons for the imposition of the civil penalty. The date of notification shall be deemed to be the date the mandated reporter received written notice of the alleged violation. This notice shall include specifics of the violation charged and shall be sent by overnight express mail or by registered or certified mail, return receipt requested.

5. If a civil penalty is imposed, a copy of the notice to the mandated reporter shall be sent to the appropriate licensing, regulatory, or administrative agency and to the local director who recommended the imposition of the penalty.

6. Any mandated reporter has the right to appeal the decision to impose a civil penalty in accordance with § 2.2-4026 of the Code of Virginia and pursuant to Rules of the Supreme Court of Virginia.

VA.R. Doc. No. R14-3800; Filed August 20, 2013, 4:50 p.m.

Final Regulation

Title of Regulation: **22VAC30-110. Assessment in Assisted Living Facilities (adding 22VAC30-110-10 through 22VAC30-110-110).**

Statutory Authority: § 51.5-131 of the Code of Virginia.

Effective Date: October 9, 2013.

Agency Contact: Paige McCleary, Adult Services Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

Summary:

The amendments reflect changes made by Chapters 803 and 835 of the 2012 Acts of Assembly, which relocated the adult services and adult protective services programs from the Department of Social Services (DSS) to the Department for Aging and Rehabilitative Services (DARS). The amendments update the agency name from DSS to DARS, change the chapter and section numbers so that the regulation appears under DARS in the Virginia Administrative Code, and update cross references.

CHAPTER ~~745~~ 110

ASSESSMENT IN ASSISTED LIVING FACILITIES

Part I

Definitions

~~22VAC40-745-10~~. 22VAC30-110-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Applicant" means an adult planning to reside in an assisted living facility.

"Assessment" means a standardized approach using common definitions to gather sufficient information about applicants to and residents of assisted living facilities to determine the need for appropriate level of care and services.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Moderate assistance means dependency in two or more of the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive).

"Assisted living facility (ALF)" means any public or private assisted living facility that is required to be licensed as an assisted living facility by the Department of Social Services under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, specifically, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the ~~department~~ Department of Social Services as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility and meets the requirements of 22VAC40-72.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an assisted living facility with an approved rate.

"Case management" means multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.

"Case management agency" means a public human service agency which employs or contracts for case management.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Consultation" means the process of seeking and receiving information and guidance from appropriate human services agencies and other professionals when assessment data indicate certain social, physical and mental health conditions.

"Department" or ~~"DSS"~~ "DARS" means the Virginia Department ~~of Social Services~~ for Aging and Rehabilitative Services.

"Dependent" means, for activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the individual needs the assistance of another person or needs the assistance of another person and equipment or device to safely complete the activity. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the person's behavior is aggressive, abusive, or disruptive.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by not permitting entry into the facility until requirements for admission have been met.

"Facility" means an assisted living facility.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

"Medication administration" means the degree of assistance required to take medications and is a part of determining the need for appropriate level of care and services.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-203 et seq. and 63.2-300 et seq.) of Title 63.2, Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of

Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, or hospitals operated by the state under Chapters 6.1 and 9 (§§ 23-50.4 et seq. and 23-62 et seq.) of Title 23 of the Code of Virginia and supported wholly or principally by public funds, including but not limited to funds provided expressly for the purposes of case management.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument. For private pay individuals, a qualified assessor is staff of the assisted living facility trained in the completion of the uniform assessment instrument or an independent private physician.

"Reassessment" means an update of information at any time after the initial assessment. In addition to a periodic reassessment, a reassessment should be completed whenever there is a significant change in the resident's condition.

"Resident" means an individual who resides in an assisted living facility.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Minimal assistance means dependency in only one activity of daily living or dependency in one or more of the selected instrumental activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes independent living facilities that voluntarily become licensed.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an auxiliary grant resident of an assisted living facility who meets the criteria set forth in 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an activity of daily living.

"Uniform assessment instrument" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument which may be used for private pay residents; social and financial information which is not relevant because of the resident's payment status is not included on this version.

"User's Manual: Virginia Uniform Assessment Instrument" means the department-designated handbook containing common definitions and procedures for completing the department-designated assessment form.

"Virginia Department of Medical Assistance Services ~~(DMAS)~~" or "DMAS" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

Part II
Assessment Services

~~22VAC40-745-20.~~ 22VAC30-110-20. Persons to be assessed.

A. All residents of and applicants to assisted living facilities must be assessed face-to-face using the uniform assessment instrument prior to admission, at least annually, and whenever there is a significant change in the resident's condition.

B. For private pay individuals, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument. Qualified staff of the assisted living facility are employees of the facility who have successfully completed state-approved training on the uniform assessment instrument for either public or private pay assessments. The assisted living facility maintains documentation of the completed training. The administrator or the administrator's designated representative must approve and sign the completed uniform assessment instrument for private pay individuals. A private pay individual may request the assessment be completed by a qualified public human services agency assessor. When a public human services agency assessor completes the uniform assessment instrument for a private pay individual, the agency may determine and charge a fee for private pay applicants and residents; the fee may not exceed the fee paid by DMAS for public pay applicants and residents.

C. For public pay individuals, a uniform assessment instrument shall be completed by a case manager or a qualified assessor to determine the need for residential care or assisted living care services. The assessor is qualified to complete the assessment if the assessor has completed a state-approved training course on the state-designated uniform assessment instrument. Public human services agency assessors who routinely complete, as part of their job descriptions, uniform assessment instruments for applicants to or residents of assisted living facilities prior to January 1, 2004, may be deemed to be qualified assessors without the completion of the training course. Qualified assessors who may authorize assisted living facility services for public pay individuals are employees of (i) local departments of social services; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards; (v) local

departments of health; (vi) state facilities operated by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, (vii) acute-care hospitals, and (viii) Department of Corrections ~~Community Release Units~~; and independent physicians.

D. The assisted living facility must coordinate with the assessor to ensure that the uniform assessment instrument is completed as required.

~~22VAC40-745-30~~. 22VAC30-110-30. Determination of services to be provided.

A. The assessment shall be conducted with the department-designated uniform assessment instrument which sets forth a resident's care needs. The uniform assessment instrument is designed to be a comprehensive, accurate, standardized, and reproducible assessment of individuals seeking or receiving long-term care services. The uniform assessment instrument is comprised of a short assessment and a full assessment. The short assessment is designed to briefly assess the individual's need for appropriate level of care and services and to determine if a full assessment is needed. The uniform assessment instrument shall contain the following items: Full name of the individual; social security number; current address; date of birth; sex; marital status; racial/ethnic background; education; method for communication of needs; primary caregiver or emergency contact or both; usual living arrangements; problems with physical environmental; use of current formal services; annual income; sources of income; legal representatives; benefits or entitlements received; types of health insurance; performance on functional status which includes ADLs, continence, ambulation and IADLs; physician information; admissions to hospitals, nursing facilities or assisted living facilities for medical or rehabilitation reasons; advance directives; diagnoses and medication profile; sensory functioning; joint motion; presence of fractures/dislocations; missing limbs or paralysis/paresis; nutrition; smoking history; use of rehabilitation therapies; presence of pressure ulcers; need for special medical procedures; need for ongoing medical/nursing needs; orientation; memory and judgment; behavior pattern; life stressors; emotional status; social history which includes activities, religious involvement; contact with family and friends; hospitalization for emotional problems; use of alcohol or drugs; assessment of caregivers; and an assessment summary.

B. Sections of the uniform assessment instrument which must be completed are as follows:

1. The assessment for private pay individuals shall include the following portions of the uniform assessment instrument: name of the individual; social security number; current address; birthdate; sex; marital status; performance on functional status, which includes ADLs, continence, ambulation, IADLs, medication administration, and behavior pattern. In lieu of completing selected parts of the department-designated uniform assessment instrument, the alternate uniform assessment instrument developed for private pay applicants and residents may be used.

2. For public pay individuals, the short form of the uniform assessment instrument shall be completed. The short form consists of sections related to identification and background, functional status, medication administration, and behavior pattern. If, upon assessment, it is determined that the individual is dependent in at least two activities of daily living or is dependent in behavior, then the full assessment must be completed.

C. 1. The uniform assessment instrument shall be completed within 90 days prior to the date of admission to the assisted living facility. If there has been a significant change in the individual's condition since the completion of the uniform assessment instrument which would affect the admission to an assisted living facility, a new uniform assessment instrument shall be completed as specified in ~~22VAC40-745-20~~ 22VAC30-110-20.

2. When a resident moves to an assisted living facility from another assisted living facility a new uniform assessment instrument is not required except that a new uniform assessment instrument shall be completed whenever there is a significant change in the resident's condition or the assessment was completed more than 12 months ago.

3. In emergency placements, the uniform assessment instrument must be completed within seven working days from the date of placement. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker for public pay individuals or by a Virginia adult protective services worker or independent physician for private pay individuals.

D. The uniform assessment instrument shall be completed at least annually on all residents of assisted living facilities. Uniform assessment instruments shall be completed as needed whenever there is a significant change in the resident's condition. All uniform assessment instruments shall be completed as required by ~~22VAC40-745-20~~ 22VAC30-110-20.

E. At the request of the assisted living facility, the resident, the resident's representative, the resident's physician, ~~DSS~~ the Department of Social Services, or the local department of social services, an independent assessment using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. An independent assessment is an assessment that is completed by an entity other than the original assessor. The assisted living facility shall assist the resident in obtaining the independent assessment as requested. If the request is for a private pay resident, and the independent assessment confirms that the resident's placement is appropriate, then the entity requesting the independent assessment shall be responsible for payment of the assessment, if applicable.

F. The assessor shall consult with other appropriate human service professionals as needed to complete the assessment.

G. DMAS shall reimburse for completion of assessments and authorization of assisted living facility placement for public pay applicants and residents pursuant to this section.

~~22VAC40-745-40.~~ 22VAC30-110-40. Discharge.

A. Discharge is the process that ends the stay in an assisted living facility. Staff of the assisted living facility must plan for post-discharge services when the public pay resident is returned to a home-based placement, a nursing facility, or other placement. Assisted living facility staff shall notify in writing the local department of social services financial eligibility worker in the jurisdiction responsible for authorizing the auxiliary grant and the public human services agency assessor of the date and place of discharge as well as when a resident dies. The assisted living facility must make these notifications 14 days prior to the resident's planned discharge or within five days after the death of the resident. In the event of an emergency discharge as defined by ~~22VAC40-71-160~~ 22VAC40-72-420, the notification shall be made as rapidly as possible, but must be made by close of business on the day following the emergency discharge.

B. Upon issuing a notice of summary order of suspension to an assisted living facility, the Commissioner of the Virginia Department of Social Services or his designee shall contact the appropriate local department of social services to develop a relocation plan. The residents of an assisted living facility whose license has been summarily suspended pursuant to § 63.2-1709 of the Code of Virginia shall be relocated as soon as possible to reduce the risk of jeopardizing the health, safety, and welfare of residents. An assessment of the relocated resident is not required, pursuant to ~~22VAC40-745-30 C 3~~ 22VAC30-110-30 C 2.

~~22VAC40-745-50.~~ 22VAC30-110-50. Authorization of services to be provided.

A. The assessor is responsible for authorizing the individual for the appropriate level of care for admission to and continued stay in an assisted living facility.

B. The assisted living facility must be knowledgeable of the criteria for level of care in an assisted living facility and is responsible for discharge of the resident whenever a resident does not meet the criteria for level of care in an assisted living facility upon admission or at any later time.

C. The appropriate level of care must be documented on the uniform assessment instrument, completed in a manner consistent with the definitions of activities of daily living and directions provided in the User's Manual: Virginia Uniform Assessment Instrument.

D. During an inspection or review, staff from either the ~~department~~ Department of Social Services, DMAS, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's uniform assessment instrument is not reflective of the resident's current status.

~~22VAC40-745-60.~~ 22VAC30-110-60. Criteria for residential living care.

Individuals meet the criteria for residential living as documented on the uniform assessment instrument when at least one of the following describes their functional capacity:

1. Rated dependent in only one of seven ADLs (i.e., bathing, dressing, toileting, transferring, bowel function, bladder function, and eating/feeding).

2. Rated dependent in one or more of four selected IADLs (i.e., meal preparation, housekeeping, laundry, and money management).

3. Rated dependent in medication administration.

~~22VAC40-745-70.~~ 22VAC30-110-70. Criteria for assisted living care.

Individuals meet the criteria for assisted living as documented on the uniform assessment instrument when at least one of the following describes their capacity:

1. Rated dependent in two or more of seven ADLs.

2. Rated dependent in behavior pattern (i.e., abusive, aggressive, and disruptive).

~~22VAC40-745-80.~~ 22VAC30-110-80. Rating of levels of care on the uniform assessment instrument.

A. The rating of functional dependencies on the uniform assessment instrument must be based on the individual's ability to function in a community environment.

B. The following abbreviations shall mean: D = dependent; and TD = totally dependent. Mechanical help means equipment or a device or both are used; human help includes supervision and physical assistance. Asterisks (*) denote dependence in a particular function.

1. Activities of daily living.

a. Bathing.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Is performed by others* (TD)

b. Dressing.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Is performed by others* (TD)

(6) Is not performed* (TD)

c. Toileting.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Performed by others* (TD)

(6) Is not performed* (TD)

d. Transferring.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Is performed by others* (TD)

(6) Is not performed* (TD)

e. Bowel function.

(1) Continent

(2) Incontinent less than weekly

(3) Ostomy self-care

(4) Incontinent weekly or more* (D)

(5) Ostomy not self-care* (TD)

f. Bladder function.

(1) Continent

(2) Incontinent less than weekly

(3) External device, indwelling catheter, ostomy, self-care

(4) Incontinent weekly or more* (D)

(5) External device, not self-care* (TD)

(6) Indwelling catheter, not self-care* (TD)

(7) Ostomy, not self-care* (TD)

g. Eating/feeding.

(1) Without help

(2) Mechanical help only

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Performed by others (includes spoon fed, syringe/tube fed, fed by IV)* (TD)

2. Behavior pattern.

a. Appropriate

b. Wandering/passive less than weekly

c. Wandering/passive weekly or more

d. Abusive/aggressive/disruptive less than weekly* (D)

e. Abusive/aggressive/disruptive weekly or more* (D)

3. Instrumental activities of daily living.

a. Meal preparation.

(1) No help needed

(2) Needs help* (D)

b. Housekeeping.

(1) No help needed

(2) Needs help* (D)

c. Laundry.

(1) No help needed

(2) Needs help* (D)

d. Money management.

(1) No help needed

(2) Needs help* (D)

4. Medication administration.

a. Without assistance

b. Administered/monitored by lay person* (D)

c. Administered/monitored by professional staff* (D)

~~22VAC40-745-90.~~ 22VAC30-110-90. Actions to be taken upon completion of the uniform assessment instrument.

A. Public pay individuals.

1. Upon completion of the uniform assessment instrument for admission, a significant change in the resident's condition, or the annual reassessment, the case manager or a qualified assessor shall forward to the local department of social services financial eligibility worker in the appropriate agency of jurisdiction, in the format specified by the department, the effective date of admission or change in level of care. Qualified assessors who may perform the annual reassessment or a change in level of care for public pay individuals are employees of (i) local departments of social services; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards; and (v) local departments of health, or an independent physician to complete the uniform assessment instrument.

2. The completed uniform assessment instrument, the referral to the financial eligibility worker, and other relevant data shall be maintained in the assisted living facility resident's record.

3. The annual reassessment shall be completed by the qualified assessor conducting the initial assessment. If the original assessor is neither willing nor able to complete the assessment and another assessor is not available, the local department of social services where the resident resides following placement in an assisted living facility shall be the assessor.

4. Clients of a community services board shall be assessed and reassessed by qualified assessors employed by the community services board.

5. The facility shall provide to the community services board or behavioral health authority notification of uniform assessment instruments that indicate observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, pursuant to § 63.2-1805 B of the Code of Virginia.

B. For private pay residents, the assisted living facility shall ensure that assessments for all residents at admission and at subsequent intervals are completed as required in this chapter. The assisted living facility shall maintain in the resident's record the resident's uniform assessment instrument and other relevant data.

~~22VAC40-745-100.~~ 22VAC30-110-100. Targeted case management for auxiliary grant recipients.

A. Targeted case management shall be limited to those residents who have multiple needs across multiple providers and this coordination is beyond the scope of the assisted living facility. It shall be the responsibility of the assessor who identifies the individual's need for residential care or assisted living care in an assisted living facility to assess the need for targeted case management services as defined in ~~Part IV (12VAC30-50-410 et seq.) of 12VAC30-50~~ 12VAC30-50-470.

B. A case management agency must have signed an agreement with DMAS to be reimbursed for the provision of targeted case management services to auxiliary grant recipients.

C. The local department of social services where the adult resides, following placement in an assisted living facility, shall be the case management agency when there is no other qualified case management provider willing or able to provide case management services.

D. A qualified case manager must possess a combination of relevant work experience in human services or health care and relevant education which indicates that the individual possesses the knowledge, skills, and abilities at entry level as defined in ~~Part IV (12VAC30-50-410 et seq.) of 12VAC30-50~~ 12VAC30-50-470. This must be documented on the case manager's job application form or supporting documentation or observable in the job or promotion interview. When the provider agency is a local department of social services, case managers shall meet the qualifications for social work/social work supervisor classification as specified in 22VAC40-670.

Part III
Resident Appeals

~~22VAC40-745-110.~~ 22VAC30-110-110. Resident appeals.

Assessors shall advise orally and in writing all applicants to and residents of assisted living facilities for which assessment or targeted case management services or both are provided of the right to appeal the outcome of the assessment, the annual reassessment, or determination of level of care. Applicants for auxiliary grants who are denied an auxiliary grant because the assessor determines that they do not require the minimum level of services offered in the residential care level have the right to file an appeal with the ~~department of~~ Department of Social Services under § 63.2-517 of the Code of Virginia. A determination that the individual does not meet the criteria to receive assisted living is an action which is appealable to DMAS.

DOCUMENTS INCORPORATED BY REFERENCE ~~(22VAC40-745)~~ (22VAC30-110)

User's Manual: Virginia Uniform Assessment Instrument (UAI), Commonwealth of Virginia, Revised April 1998.

VA.R. Doc. No. R14-3807; Filed August 20, 2013, 5:09 p.m.

Final Regulation

Title of Regulation: **22VAC30-120. Adult Services Approved Providers (adding 22VAC30-120-10 through 22VAC30-120-160).**

Statutory Authority: § 51.5-131 of the Code of Virginia.

Effective Date: October 9, 2013.

Agency Contact: Paige L. McCleary, Adult Services Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

Summary:

The amendments reflect changes in Virginia law made by Chapters 803 and 835 of the 2012 Acts of Assembly, which relocated the adult services and adult protective services programs from the Department of Social Services (DSS) to the Department for Aging and Rehabilitative Services (DARS). The amendments update the agency name, as appropriate, from DSS to DARS; change the chapter and section numbers so that the regulation appears under DARS in the Virginia Administrative Code; and update cross references.

CHAPTER ~~771~~ 120
ADULT SERVICES APPROVED PROVIDERS

~~22VAC40-771-10.~~ 22VAC30-120-10. Definitions.

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

"Activities of daily living ~~(ADLs)~~" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Adult" means any individual 18 years of age or over.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision and special services in his own home for up to three adults who are unable to remain in their own home because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three adults requires licensure by the Virginia Department of Social Services.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.

"Assistant" means any individual who is responsible to assist an adult services approved provider in caring for adult clients. Assistants must meet the same requirements as the provider.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for adult clients unable to perform such tasks for themselves. Chore services include minor repair work on furniture and appliances in the adult's home; carrying coal, wood and water; chopping wood; removing snow; yard maintenance; and painting.

"Client" means any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services.

"Companion provider" means a provider who assists adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management and activities of daily living (ADLs).

"Department" means the Virginia Department ~~of Social Services~~ for Aging and Rehabilitative Services.

"Home-based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.

"Homemaker services" means a provider who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, nutrition, consumer or hygiene education.

"In-home provider" means an individual who provides care in the home of the adult client needing supervision and/or services. In-home providers include companion, chore, and homemaker providers.

"Instrumental activities of daily living" means meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. An adult client's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local department-approved provider" means a provider that is not subject to licensure and is approved by a local department of social services to provide services to ~~Department of Social Services'~~ clients.

"Out-of-home provider" means an individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.

"Personal care services" means the provision of nonskilled services including assistance in the activities of daily living, and may include instrumental activities of daily living related to the needs of the adult client, to maintain the adult client's health and safety in their home.

"Responsible person" means an individual designated by or for an adult client who is authorized to make decisions concerning the adult client and/or to receive information about the adult client.

~~22VAC40-771-20.~~ 22VAC30-120-20. Local department-approved providers.

A. This regulation applies to providers approved by a local department and does not apply to facilities or organizations licensed by a licensing or regulatory agency. A local department shall not approve a provider that does not meet the standards set out in this regulation.

B. This regulation is applicable to the following providers:

1. Out-of-home providers including:

a. Adult day services providers;

b. Adult foster care providers;

2. In-home providers including:

a. Chore providers;

b. Companion providers;

c. Homemaker providers.

C. The local department is not required to accept provider applications for any type of service when the local department has a sufficient number of providers for that service to meet the client population needs or does not offer the type of service.

D. Prior to approving an out-of-home provider located in another jurisdiction, the local department shall seek written permission from the local department where the provider will provide services.

E. Local departments may use an approved provider from another jurisdiction without performing another approval study when the local department obtains written permission and a copy of the approval documents from the local department that conducted the approval study.

~~22VAC40-771-30.~~ 22VAC30-120-30. Standards for providers and other persons.

A. Age requirements include:

1. All local department-approved adult services homemaker providers shall be at least 18 years of age.

2. All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service.

3. Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.

B. Criminal record background checks and additional requirements include:

1. The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search. A new criminal record background check shall be required at the time of renewal.

2. Convictions of crimes listed in § 63.2-1719 of the Code of Virginia shall prohibit a provider, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider. In addition, if the provider or, for adult foster care and adult day services, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.

3. Conviction of a crime listed in § 63.2-1719 of the Code of Virginia will result in the revocation of the provider's approval unless an allowable variance is granted by the local department.

4. When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of a felony or misdemeanor not listed in § 63.2-1719 of the Code of Virginia, the local department may approve the provider if the local department determines that the conviction does not jeopardize the safety or proper care of the adult.

C. Interview, references, and employment history requirements include:

1. The provider shall participate in interviews with the local department.

2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.

3. The provider shall provide information on the provider's employment history.

4. The local department shall use the interviews, references, and employment history to assess that the provider is:

a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;

b. Able to sustain positive and constructive relationships with adults in care, and to relate to adults with respect, courtesy, and understanding;

c. Capable of handling emergencies with dependability and good judgment; and

d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.

5. For adult foster care and adult day services, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.

6. For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:

a. Home management and household maintenance;

b. The types of personal care of the elderly or adults with a disability permitted by regulation;

c. Nutrition education and meal planning and preparation, including special diets; and

d. Personal hygiene and consumer education.

7. For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:

a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.

b. Housekeeping services based on the needs of the adult in care.

c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.

d. Provision of clean bed linens and towels at least once a week and as needed by the adult.

e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.

f. Provision of generic personal toiletries including soap and toilet paper.

g. Assistance with the following: care of personal possessions, care of personal funds if requested by the adult and adult foster care home's policy permits it, use of telephone, arranging transportation, obtaining necessary personal items and clothing, making and keeping appointments, and correspondence.

h. Securing health care and transportation when needed for medical treatment.

i. Providing social and recreational activities as required by the local department and consistent with licensing regulations.

j. General supervision for safety.

D. Training requirements include:

1. The local department shall provide basic orientation to any approved provider.

2. The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

E. Medical requirements include:

1. The provider; for out-of-home care, the assistant; the provider's spouse; and all other adult household members who come in contact with adults in care shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

F. All local department-approved providers shall keep the local department informed of changes in the household that may affect approval of the provider.

G. The provider shall have the capability to fully perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

H. Any provider who causes the local department to make an improper payment by withholding information or providing false information may be required to repay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

~~22VAC40-771-40.~~ 22VAC30-120-40. Standards for care for adult services providers.

A. The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability or impairment.

B. Supervision requirements include:

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.

2. A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.

3. If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

4. The provider shall ensure that adequate care and supervision are provided to adults in care and that the adult's health, safety, and well-being are protected.

C. The following standards apply to food provided to adult clients by adult day services and adult foster care providers:

1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.

2. Adults in care shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

D. Requirements for transportation of adults include:

1. If the provider and, for out-of home services, the assistant; spouse of the provider; volunteer; or any other agent involved in the day-to-day operation of the adult day services or adult foster care transports adults in care, the provider or the person providing the transportation shall have a valid driver's license and automobile liability insurance.

2. The vehicle used to transport adults shall have a valid license and inspection sticker.

3. Providers or the person who transports adults in care must ensure that all passengers use safety belts in accordance with requirements of Virginia law.

E. Requirements for medical care include:

1. The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.

2. The provider shall be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.

3. The adult foster care and adult day services provider shall:

a. Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;

b. Document all medications taken by adults in care, including over-the-counter medications;

c. Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;

d. Keep medications separate from food except those items that must be refrigerated;

e. Report all major injuries and accidents to the adult's responsible person immediately;

f. Have authorization for emergency medical care for each adult in care; and

g. Have first aid supplies easily accessible in case of accidents.

4. Admission or retention of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of the adult services worker or by the adult's physician.

F. The adult day services and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.

G. All providers of adult services shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

H. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

~~22VAC40-771-50.~~ 22VAC30-120-50. Standards for the home of the adult foster care or adult day services provider.

A. Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:

a. Space to keep clothing and other personal belongings;

b. Accessible and adequate basin and toilet facilities;

c. Comfortable sleeping or napping furnishings;

d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;

e. Adequate space for recreational activities; and

f. Sufficient space and equipment for food preparation, service, and proper storage.

2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.

3. All doors and windows used for ventilation shall be appropriately screened.

4. Rooms used by adults in care shall have adequate lighting for activities and the comfort of adults.

5. The provider and any adult in care shall have access to a working telephone in the home.

6. The home shall be in compliance with all local ordinances.

7. Additional standards for adult foster care include:

a. No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.

b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.

B. Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.

2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.

4. Attics or basements used by adults in care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window.

5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.

6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in care who are mentally incapacitated.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in care.

D. Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the ~~department~~ Department of Social Services.

3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the ~~department~~ Department of Social Services.

~~22VAC40-771-60.~~ 22VAC30-120-60. Record requirements for adult foster care and adult day services providers.

A. The provider shall maintain written legible information on each adult in care.

B. Information on the adult in care shall include:

1. Identifying information on the adult in care;

2. Name, address, and home and work telephone numbers of responsible persons;

3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;

5. Name of persons not authorized to call or visit the adult in care;

6. Date of admission and discharge of the adult in care;

7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;

8. Medical information pertinent to the health care of the adult in care;

9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and

10. Placement agreement between the provider and the adult and his responsible person, where applicable.

C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.

D. The local department and its representatives shall have access to all records.

E. The department and its representative shall have access to all records.

~~22VAC40-771-70.~~ 22VAC30-120-70. Approval period.

The approval period for a provider may be up to 24 months when the provider meets the standards. In the case of adult day services and adult foster care, the home shall also meet the standards.

~~22VAC40-771-80.~~ 22VAC30-120-80. Allowable variance.

A. The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request.

B. The local department shall consult with the state adult services consultant prior to granting an allowable variance.

C. The allowable variance shall be in writing with a copy maintained by the local department and the provider.

D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.

E. The allowable variance shall be requested and granted by the local department prior to the approval of the provider or at the time of the provider's renewal.

~~22VAC40-771-90.~~ 22VAC30-120-90. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or

2. The adult or his responsible person requests placement or service in an emergency.

B. A representative of the local department shall visit the provider's home to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services.

C. For an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. Emergency approval shall not exceed 30 days.

E. The provider must meet all applicable standards if services shall be provided beyond the 30-day emergency approval or if the emergency approval is extended beyond 30 days.

~~22VAC40-771-100.~~ 22VAC30-120-100. Provider monitoring.

A. For adult day services or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. For home-based care providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult in care or his responsible person shall have access to all provider monitoring reports completed by the local department upon request.

~~22VAC40-771-110.~~ 22VAC30-120-110. Renewal process.

The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

~~22VAC40-771-120.~~ 22VAC30-120-120. Inability to meet standards.

A. If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

C. The local department may suspend approval if noncompliance may jeopardize the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

D. If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.

E. The local department shall immediately revoke its approval if noncompliance jeopardizes the health, safety and proper care of the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision.

F. The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

~~22VAC40-771-130.~~ 22VAC30-120-130. Relocation of out-of-home provider.

A. If the out-of-home provider moves, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 days after relocation to avoid disruption of services to the adult in care.

B. If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself.

~~22VAC40-771-140.~~ 22VAC30-120-140. Right to review.

A. The provider shall have the right to request that the decision of the local department be reviewed by the local director of social services.

B. The provider must request the review within 10 calendar days from the effective date of the notice of action.

~~22VAC40-771-150.~~ 22VAC30-120-150. Rights of adults in care.

A. Adults in the care of local department-approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

1. To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record;

2. To be fully informed, prior to the beginning of the provision of services, of services available and of related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record;

3. Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf;

4. To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting;

5. When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a

statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the local department that made the placement shall be given advance notice of at least 30 days for any transfer or discharge;

6. An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge must be to a setting that will ensure the protection of the adult's health, safety and welfare; the local department that made the placement must be notified of the emergency discharge as soon as practicable but no later than 24 hours after the emergency discharge;

7. In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment;

8. When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

9. To be free to select health care services from reasonably available resources;

10. To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider;

11. To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;

13. When receiving care from an out-of-home local department-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;

14. To be encouraged to function at his highest mental, emotional, physical, and social potential;

15. To receive and send uncensored, unopened mail;

16. To refuse medication unless there has been a court finding of incapacity;

17. To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults; and

18. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:

a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;

19. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

20. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations that the adult may have at the home;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff shall not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations ~~of the State Board of Social Services~~ administered by the Commissioner for Aging and Rehabilitative Services; and

f. When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and

21. Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of

understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

C. The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline ~~of the Department of Social Services~~ as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.

D. The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.

E. Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

H. When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

I. When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

~~22VAC40-771-160.~~ 22VAC30-120-160. Responsibilities of adults in adult foster care or adult day services.

A. Adults in care shall follow the rules of the provider unless these rules are in violation of adults' rights.

B. Adults in care, or the local department when appropriate, shall give a two-week written notice of intent to leave the placement.

C. Adults in care shall notify providers if there are changes in the adult's health status.

VA.R. Doc. No. R14-3808; Filed August 20, 2013, 5:26 p.m.

DEPARTMENT OF FORENSIC SCIENCE

Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

ODV INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383

ODV NarcoPouch

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	902 – Marquis Reagent
Amphetamine	902 – Marquis Reagent
Methamphetamine	902 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	902 – Marquis Reagent
Cocaine Hydrochloride	904 or 904B – Cocaine HCl and Base Reagent
Cocaine Base	904 or 904B – Cocaine HCl and Base Reagent
Barbiturates	905 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	907 – Ehrlich's (Modified) Reagent
Marijuana	908 – Duquenois – Levine Reagent
Hashish Oil	908 – Duquenois – Levine Reagent
Marijuana	909 – K N Reagent
Hashish Oil	909 – K N Reagent
Phencyclidine (PCP) Reagent	914 – PCP Methaqualone
Heroin	922 – Opiates Reagent
Methamphetamine	923 – Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	923 – Methamphetamine/Ecstasy Reagent
Heroin	924 – Mecke's (Modified) Reagent
Diazepam	925 – Valium/Ketamine Reagent
Ketamine	925 – Valium/Ketamine Reagent
Ephedrine	927 – Ephedrine Reagent
Gamma–Hydroxybutyrate (GHB)	928 – GHB Reagent

ODV NarcoTest

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	7602 – Marquis Reagent
Amphetamine	7602 – Marquis Reagent
Methamphetamine	7602 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7602 – Marquis Reagent
Barbiturates	7605 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	7607 – Ehrlich's (Modified) Reagent
Marijuana	7608 – Duquenois Reagent
Hashish Oil	7608 – Duquenois Reagent
Marijuana	7609 – KN Reagent
Hashish Oil	7609 – KN Reagent
Cocaine Hydrochloride	7613 – Scott (Modified) Reagent
Cocaine Base	7613 – Scott (Modified) Reagent
Phencyclidine (PCP)	7614 – PCP Methaqualone Reagent
Heroin	7622 – Opiates Reagent
Methamphetamine	7623 – Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7623 – Methamphetamine/Ecstasy Reagent
Heroin	7624 – Mecke's Reagent
Diazepam	7625 – Valium/Ketamine Reagent
Ketamine	7625 – Valium/Ketamine Reagent
Ephedrine	7627 – Chen's Reagent - Ephedrine
Gamma–Hydroxybutyrate (GHB)	7628 – GHB Reagent

SIRCHIE FINGERPRINT LABORATORIES
100 HUNTER PLACE
YOUNGSVILLE, NORTH CAROLINA 27596

NARK

Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	1 – Mayer's Reagent
Heroin	1 – Mayer's Reagent
Morphine	1 – Mayer's Reagent
Amphetamine	1 – Mayer's Reagent
Methamphetamine	1 – Mayer's Reagent
Opium Alkaloids	2 – Marquis Reagent
Heroin	2 – Marquis Reagent
Morphine	2 – Marquis Reagent
Amphetamine	2 – Marquis Reagent
Methamphetamine	2 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	2 – Marquis Reagent
Meperidine (Demerol) (Pethidine)	2 – Marquis Reagent
Heroin	3 – Nitric Acid
Morphine	3 – Nitric Acid
Cocaine Hydrochloride	4 – Cobalt Thiocyanate Reagent
Cocaine Base	4 – Cobalt Thiocyanate Reagent
Procaine	4 – Cobalt Thiocyanate Reagent
Tetracaine	4 – Cobalt Thiocyanate Reagent
Barbiturates	5 – Dille-Koppanyi Reagent
Heroin	6 – Mandelin Reagent
Morphine	6 – Mandelin Reagent
Amphetamine	6 – Mandelin Reagent
Methamphetamine	6 – Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	7 – Ehrlich's Reagent
Marijuana	8 – Duquenois Reagent
Hashish	8 – Duquenois Reagent
Hashish Oil	8 – Duquenois Reagent
Tetrahydrocannabinol (THC)	8 – Duquenois Reagent
Marijuana	9 – NDB (Fast Blue B Salt) Reagent
Hashish	9 – NDB (Fast Blue B Salt) Reagent
Hashish Oil	9 – NDB (Fast Blue B Salt) Reagent
Tetrahydrocannabinol (THC)	9 – NDB (Fast Blue B Salt) Reagent
Cocaine Base	13 – Cobalt Thiocyanate/Crack Test

NARK II

Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	01 – Marquis Reagent
Heroin	01 – Marquis Reagent
Morphine	01 – Marquis Reagent
Amphetamine	01 – Marquis Reagent
Methamphetamine	01 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	01 – Marquis Reagent
Morphine	02 – Nitric Acid
Heroin	02 – Nitric Acid
Barbiturates	03 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	04 – Ehrlich's Reagent
Marijuana	05 – Duquenois – Levine Reagent
Hashish	05 – Duquenois – Levine Reagent
Hashish Oil	05 – Duquenois – Levine Reagent
Tetrahydrocannabinol (THC)	05 – Duquenois – Levine Reagent
Cocaine Hydrochloride	07 – Scott's (Modified) Reagent
Cocaine Base	07 – Scott's (Modified) Reagent

Phencyclidine (PCP)	09 – Phencyclidine Reagent
Opiates	10 – Opiates Reagent
Heroin	10 – Opiates Reagent
Morphine	10 – Opiates Reagent
Buprenorphine	10 – Special Opiates Reagent
Heroin	11 – Mecke's Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	11 – Mecke's Reagent
Pentazocine	12 – Talwin/Pentazocine Reagent
Ephedrine	13 – Ephedrine Reagent
Diazepam	14 – Valium Reagent
Methamphetamine	15 – Methamphetamine (Secondary Amines Reagent)
Narcotic Alkaloids	19 – Mayer's Reagent
Heroin	19 – Mayer's Reagent
Morphine	19 – Mayer's Reagent
Amphetamine	19 – Mayer's Reagent
Methamphetamine	19 – Mayer's Reagent
3,4–Methylenedioxypyrovalerone (MDPV)	24 – MDPV (Bath Salts) Reagent
Beta–keto–N–methyl–3,4–benzodioxyolybutanamine (other name: butylone)	24 – MDPV Synthetic Cathinones Reagent
3,4–methylenedioxyethcathinone (other name: ethylone)	24 – MDPV Synthetic Cathinones Reagent
3,4–methylenedioxymethcathinone (other name: methylone)	24 – MDPV Synthetic Cathinones Reagent
Naphthylpyrovalerone (other name: naphyrone)	24 – MDPV Synthetic Cathinones Reagent
Beta–keto–methylbenzodioxolylpentanamine (other name: pentylone)	24 – MDPV Synthetic Cathinones Reagent
4–Methylmethcathinone (Mephedrone)	25 – Mephedrone (Bath Salts) Reagent
Alpha–pyrrolidinovalerophenone (other name: alpha-PVP)	26 – A-PVP (Synthetic Stimulant) Reagent
4–Bromo–2,5–dimethoxyphenethylamine (other name: 2C-B)	29 – 2C Reagent
2–(4–Chlror–2,5–dimethoxyphenyl)ethanamine (other name: 2C-C)	29 – 2C Reagent
4–Ethyl–2,5–dimethoxyphenethylamine (other name: 2C-E)	29 – 2C Reagent
4–Iodo–2,5–dimethoxyphenethylamine (other name: 2C-I)	29 – 2C Reagent
2–(2,5–Dimethoxy–4–nitro-phenyl)ethanamine (other name: 2C-N)	29 – 2C Reagent
2,5–dimethoxy-4–(n)–propylthiophenethylamine (other name: 2C-T-7)	29 – 2C Reagent
Psilocybin	30 – Psilocybin/Psilocin Reagent
Methamphetamine	31 – Liebermann Reagent
Morphine	31 – Liebermann Reagent

ARMOR HOLDINGS, INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383
NIK

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Test A 6071 – Marquis Reagent
Amphetamine	Test A 6071 – Marquis Reagent
Methamphetamine	Test A 6071 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	Test A 6071 – Marquis Reagent
Morphine	Test B 6072 – Nitric Acid Reagent
Barbiturates	Test C 6073 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	Test D 6074 – LSD Reagent System
Marijuana	Test E 6075 – Duquenois – Levine Reagent
Hashish Oil	Test E 6075 – Duquenois – Levine Reagent
Tetrahydrocannabinol	Test E 6075 – Duquenois – Levine Reagent
Cocaine Hydrochloride	Test G 6077 – Scott (Modified) Reagent
Cocaine Base	Test G 6077 – Scott (Modified) Reagent
Cocaine Hydrochloride	6500 or 6501 – Cocaine ID Swab
Cocaine Base	6500 or 6501 – Cocaine ID Swab
Phencyclidine (PCP)	Test J 6079 – PCP Reagent System

Heroin	Test K 6080 – Opiates Reagent
Heroin	Test L 6081 – Brown Heroin Reagent System
Gamma–Hydroxybutyrate (GHB)	Test O 6090 – GHB Reagent
Ephedrine	Test Q 6085 – Ephedrine Reagent
Pseudoephedrine	Test Q 6085 – Ephedrine Reagent
Diazepam	Test R 6085 – Valium Reagent
Methamphetamine	Test U 6087 – Methamphetamine Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	Test U 6087 – Methamphetamine Reagent
Methadone	Test W 6088 – Mandelin Reagent System

MISTRAL SECURITY INCORPORATED
7910 WOODMONT AVENUE, SUITE 820
BETHESDA, MARYLAND 20814

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Detect 4 Drugs Aerosol
Amphetamine	Detect 4 Drugs Aerosol
Methamphetamine	Detect 4 Drugs Aerosol
Marijuana	Detect 4 Drugs Aerosol
Hashish Oil	Detect 4 Drugs Aerosol
Methamphetamine	Meth 1 and 2 Aerosol
Heroin	Herosol Aerosol
Marijuana	Cannabispray 1 and 2 Aerosol
Hashish Oil	Cannabispray 1 and 2 Aerosol
Cocaine Hydrochloride	Coca-Test Aerosol
Cocaine Base	Coca-Test Aerosol
Marijuana	Pen Test – D4D
Phencyclidine	Pen Test – D4D
Amphetamine	Pen Test – D4D
Ketamine	Pen Test – D4D
Methamphetamine	Pen Test – D4D
Ephedrine	Pen Test – D4D
Heroin	Pen Test – D4D
Methadone	Pen Test – D4D
Buprenorphine	Pen Test – D4D
Opium	Pen Test – D4D
Phenobarbital	Pen Test – Barbitusol
Marijuana	Pen Test – Cannabis Test
Phencyclidine	Pen Test – Coca Test
Cocaine Hydrochloride	Pen Test – Coca Test
Cocaine base	Pen Test – Coca Test
Buprenorphine	Pen Test – C&H Test
Cocaine Hydrochloride	Pen Test – C&H Test
Cocaine base	Pen Test – C&H Test
Ephedrine	Pen Test – C&H Test
Ketamine	Pen Test – C&H Test
Heroin	Pen Test – C&H Test
Lysergic Acid Diethylamide (LSD)	Pen Test – C&H Test
Methadone	Pen Test – C&H Test
Methamphetamine	Pen Test – C&H Test
Heroin	Pen Test – Herosol
Methadone	Pen Test – Herosol
Lysergic Acid Diethylamide (LSD)	Pen Test – LSD Test
Methamphetamine	Pen Test – Meth/X Test
3,4–Methylenedioxymethamphetamine (MDMA)	Pen Test – Meth/X Test
Morphine	Pen Test – Opiatest
Opium	Pen Test – Opiatest

Diazepam	Pen Test – BZO
Ephedrine	Pen Test – Ephedrine
Pseudoephedrine	Pen Test – Ephedrine

JANT PHARMACAL CORPORATION
16255 VENTURA BOULEVARD, SUITE 505
ENCINO, CALIFORNIA 91436
Formerly available through: MILLENNIUM SECURITY GROUP
Accutest IDenta

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana/Hashish (Duquenois-Levine Reagent)
Hashish Oil	Marijuana/Hashish (Duquenois-Levine Reagent)
Heroin	Heroin Step 1 and Step 2
Cocaine Hydrochloride	Cocaine/Crack Step 1 and Step 2
Cocaine Base	Cocaine/Crack Step 1 and Step 2
3,4–Methylenedioxymethamphetamine (MDMA)	MDMA Step 1 and Step 2
Methamphetamine	Methamphetamine Step 1 and Step 2

COZART PLC
92 MILTON PARK
ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY

Drug or Drug Type:	Manufacturer's Field Test:
Cocaine	Cocaine Solid Field Test

LYNN PEAVEY COMPANY
10749 WEST 84th TERRACE
LEXEXA, KANSAS 66214
QuickCheck

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana – 10120
Marijuana	Marijuana – 10121
Hashish Oil	Marijuana – 10120
Hashish Oil	Marijuana – 10121
Heroin	Marquis – 10123
Heroin	Heroin – 10125
Cocaine Hydrochloride	Cocaine – 10124
Cocaine Base	Cocaine – 10124
Methamphetamine	Meth/Ecstasy – 10122
Methamphetamine	Marquis – 10123
3,4–Methylenedioxymethamphetamine (MDMA)	Meth/Ecstasy – 10122
3,4–Methylenedioxymethamphetamine (MDMA)	Marquis – 10123

M.M.C. INTERNATIONAL B.V.
FRANKENTHALERSTRAAT 16-18
4816 KA BREDA
THE NETHERLANDS

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Opiates/Amphetamine Test (Ampoule)
Morphine	Opiates/Amphetamine Test (Ampoule)
Amphetamine	Opiates/Amphetamine Test (Ampoule)
Methamphetamine	Opiates/Amphetamine Test (Ampoule)
Codeine	Opiates/Amphetamine Test (Ampoule)
Marijuana	Cannabis Test (Ampoule)
Hashish Oil	Cannabis Test (Ampoule)
Cocaine Hydrochloride	Cocaine/Crack Test (Ampoule)
Cocaine base	Cocaine/Crack Test (Ampoule)
Heroin	Heroin Test (Ampoule)

Ketamine	Ketamine Test (Ampoule)
Methadone	Methadone Test (Ampoule)
Methamphetamine	Crystal Meth/XTC Test (Ampoule)
3,4–Methylenedioxymethamphetamine (MDMA)	Crystal Meth/XTC Test (Ampoule)
Morphine	M&H Test (Ampoule)
Heroin	M&H Test (Ampoule)
Ephedrine	Ephedrine HCL Test (Ampoule)
Pseudoephedrine	Ephedrine HCL Test (Ampoule)
Pentazocine	Pentazocine Test (Ampoule)
Buprenorphine	Buprenorphine HCL Test (Ampoule)
Gamma–butyrolactone (GBL)	GBL Test (Ampoule)
Gamma–hydroxybutyric acid (GHB)	GHB Test (Ampoule)
Oxycodone	Oxycodone Test (Ampoule)
Oxymetholone	Steroids Test B (Ampoule)
Testosterone	Steroids Test B (Ampoule)
Methandrostenolone	Steroids Test B (Ampoule)
Phenylacetone	PMK/BMK(BMK) Test (Ampoule)
Lysergic Acid Diethylamide (LSD)	LSD Test (Ampoule)
Phencyclidine (PCP)	PCP Test (Ampoule)
Methaqualone	Methaqualone Test (Ampoule)
Amobarbital	Barbiturates Test (Ampoule)
Pentobarbital	Barbiturates Test (Ampoule)
Phenobarbital	Barbiturates Test (Ampoule)
Secobarbital	Barbiturates Test (Ampoule)
Propoxyphene	Propoxyphene Test (Ampoule)
Diazepam	V&R Test (Ampoule)
Drug or Drug Type:	Manufacturer's Field Test:
Cocaine Hydrochloride	Cocaine/Crack Test (Spray)
Cocaine base	Cocaine/Crack Test (Spray)
Cocaine Hydrochloride	Cocaine Trace Wipes
Cocaine base	Cocaine Trace Wipes
Morphine	Opiate Cassette
Heroin	Opiate Cassette
3,4–Methylenedioxymethamphetamine (MDMA)	MDMA/Ecstasy Cassette
Methamphetamine	Methamphetamine Cassette
Amphetamine	Amphetamine Cassette

REDXDEFENSE
7642 STANDISH PLACE
ROCKVILLE, MARYLAND 20855

XCAT

Drug or Drug Type:	Manufacturer's Field Test:
Cocaine Hydrochloride	COC-210 Card
Cocaine base	COC-210 Card
Phencyclidine	COC-210 Card
Heroin	HER-110 Card
Amphetamine	AMP-500 Card
Methamphetamine	AMP-500 Card
3,4–Methylenedioxymethamphetamine (MDMA)	AMP-500 Card
Butylone	AMP-500 Card
Methedrone	AMP-500 Card
Methylone	AMP-500 Card
Mephedrone	AMP-500 Card
N–Benzylpiperazine (N-BZP)	AMP-500 Card
Mescaline	AMP-500 Card
2C-I	AMP-500 Card

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry is conducting a periodic review and small business impact review of **16VAC15-21, Maximum Garnishment Amounts**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economic performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins September 9, 2013, and ends September 30, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, email reba.oconnor@doli.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

2013 Provider Reimbursement Changes and EAPG Methodology - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC § 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates for Long Term Care (12VAC30-90). DMAS is implementing a number of changes in reimbursement methodology on or after July 1, 2013, pursuant to Item 307 of the 2013 Appropriation Act.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

12VAC30-70-301 is being amended to maintain DSH payments in SFY 2014 at the SFY 2013 level. This change is mandated by Item 307.DDDD of the Appropriation Act.
($21,746,159) GF
($21,746,159) NGF
($43,492,318) TF

12VAC30-70-291 is being amended to increase Indirect Medical Education payments for freestanding children's hospitals. This change is mandated by Item 307.OOOO of the Appropriation Act.
$0 GF
$0 NGF
$0 TF

Reimbursement Changes Affecting Other Providers (12VAC30-80)

12VAC30-80-110 is being amended to specify reimbursement requirements for targeted case management for high-risk pregnant women and for infants up to age two, for community mental health services and community intellectual disability services, and for individuals who have applied for or are participating in the Individual and Family Developmental Disability Support Waiver program to come into compliance with federal requirements.
$0 GF
$0 NGF
$0 TF

12VAC30-80-20 is being amended and 12VAC30-80-36 is being created to implement Enhanced Ambulatory Patient Group (EAPG) reimbursement for outpatient hospital services effective October 1, 2013. The implementation shall be budget neutral. The authority to implement the EAPG reimbursement methodology for outpatient hospital services is granted by Item 307.OOOO of the Appropriation Act.
$0 GF
$0 NGF
$0 TF

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

12VAC30-90-36 is being amended to modify the minimum occupancy requirement for nursing facilities from 90% to 88%. This change is mandated by Item 307.CCCC of the Appropriation Act.
$916,624 GF
$916,624 NGF
$1,833,248 TF

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: 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, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

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: The cumulative table lists 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. The cumulative table is available online 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.

ERRATA

DEPARTMENT OF GENERAL SERVICES

Title of Regulation: **1VAC30-46, Accreditation for Commercial Environmental Laboratories.**

Publication: 29:26 VA.R. 3669-3694 August 26, 2013

Correction to Proposed Regulation:

Page 3685, 1VAC30-46-110 catchline, line 2, strike "to withdraw accreditation,"

VA.R. Doc. No. R12-3067; Filed August 29, 2013, 3:00 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation.**

Publication: 29:24 VA.R. 3085-3236 July 29, 2013

Correction to Final Regulation:

Page 3236, Documents Incorporated by Reference, second reference cited should read

[~~Method 1668B Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS, EPA 821-R-08-020, November 2008, U.S. Environmental Protection Agency, Officer of Water and Office of Science and Technology Engineering and Analysis Division (4303T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.~~]

VA.R. Doc. No. R08-1248; Filed August 21, 2013, 2:25 p.m.