VIRGINIA REGISTER OF REGULATIONS

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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 2014 through August 2015

Volume: Issue	Material Submitted By Noon*	Will Be Published On
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 **(Tuesday)**	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 23, 2014 **(Tuesday)**	January 12, 2015
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31:21	May 27, 2015	June 15, 2015
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
31:24	July 8, 2015	July 27, 2015
31:25	July 22, 2015	August 10, 2015
31:26	August 5, 2015	August 24, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Michael Jurgensen for the Medical Society of Virginia.

Nature of Petitioner's Request:

Part VIII. Office-Based Anesthesia.

18VAC85-20-320. General provisions.

A. Applicability of requirements for office-based anesthesia.

1. The administration of topical anesthesia, local anesthesia, minor conductive blocks, or minimal sedation/anxiolysis, not involving a drug-induced alteration of consciousness other than minimal preoperative tranquilization, is not subject to the requirements for office-based anesthesia. A health care practitioner administering such agents shall adhere to an accepted standard of care as appropriate to the level of anesthesia or sedation, including evaluation, drug selection, administration and management of complications.

2. The administration of moderate sedation/conscious sedation, deep sedation, general anesthesia, or regional anesthesia consisting of a major conductive block are subject to these requirements for office-based anesthesia. The administration of 300 or more milligrams of lidocaine or equivalent doses of local anesthetics shall be deemed to be subject to these requirements for office-based anesthesia.

3. Levels of anesthesia or sedation referred to in this chapter shall relate to the level of anesthesia or sedation intended and documented by the practitioner in the pre-operative anesthesia plan.

B. A doctor of medicine, osteopathic medicine, or podiatry administering office-based anesthesia or supervising such administration shall:

1. Perform a preanesthetic evaluation and examination or ensure that it has been performed;

2. Develop the anesthesia plan or ensure that it has been developed;

3. Ensure that the anesthesia plan has been discussed with the patient or responsible party pre-operatively and informed consent obtained;

4. Ensure patient assessment and monitoring through the pre-, peri-, and post-procedure phases, addressing not only physical and functional status, but also physiological and cognitive status;

5. Ensure provision of indicated post-anesthesia care; ~~and~~

6. Remain physically present or immediately available, as appropriate, to manage complications and emergencies until discharge criteria have been met, and

7. Document any complications occurring during surgery or during recovery in the medical record.

C. All written policies, procedures and protocols required for office-based anesthesia shall be maintained and available for inspection at the facility.

18VAC85-20-340. Procedure/anesthesia selection and patient evaluation.

A. A written protocol shall be developed and followed for procedure selection to include but not be limited to:

1. The doctor providing or supervising the anesthesia shall ensure that the procedure to be undertaken is within the scope of practice of the health care practitioners and the capabilities of the facility.

2. The procedure or combined procedures shall be of a duration and degree of complexity that shall not exceed eight hours and that will permit the patient to recover and be discharged from the facility in less than 24 hours.

3. The level of anesthesia used shall be appropriate for the patient, the surgical procedure, the clinical setting, the education and training of the personnel, and the equipment available. The choice of specific anesthesia agents and techniques shall focus on providing an anesthetic that will be effective, appropriate and will address the specific needs of patients while also ensuring rapid recovery to normal function with maximum efforts to control post-operative pain, nausea or other side effects.

B. A written protocol shall be developed for patient evaluation to include but not be limited to:

1. The preoperative anesthesia evaluation of a patient shall be performed by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. It shall consist of performing an appropriate history and physical examination, determining the patient's physical status classification, developing a plan of anesthesia care, acquainting the patient or the responsible individual with the proposed plan and discussing the risks and benefits.

2. The condition of the patient, specific morbidities that complicate anesthetic management, the specific intrinsic risks involved, and the nature of the planned procedure shall be considered in evaluating a patient for office-based anesthesia.

3. Patients who have pre-existing medical or other conditions that may be of particular risk for complications shall be

referred to a facility appropriate for the procedure and administration of anesthesia. Nothing relieves the licensed health care practitioner of the responsibility to make a medical determination of the appropriate surgical facility or setting.

C. Office-based anesthesia shall only be provided for patients in physical status classifications for Classes I, II and III. Patients in Classes IV and V shall not be provided anesthesia in an office-based setting.

18VAC85-20-350. Informed consent.

1. Prior to administration, the anesthesia plan shall be discussed with the patient or responsible party by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. Informed consent for the nature and objectives of the anesthesia planned shall be in writing and obtained from the patient or responsible party before the procedure is performed. Such consent shall include a discussion of discharge planning and what care or assistance the patient is expected to require after discharge. Informed consent shall only be obtained after a discussion of the risks, benefits, and alternatives, contain the name of the anesthesia provider and be documented in the medical record.

2. The surgical consent forms shall be executed by the patient or the responsible party and shall contain a statement that the doctor performing the surgery is board certified or board eligible by one of the ABMS boards and list which board or contain a statement that the doctor performing the surgery is not board certified or board eligible.

3. The surgical consent forms shall indicate whether the surgery is elective, medically necessary, or if a consent is obtained in an emergency, the nature of the emergency.

18VAC85-20-370. Emergency and transfer protocols.

A. There shall be written protocols for handling emergency situations, including medical emergencies and internal and external disasters. All personnel shall be appropriately trained in and regularly review the protocols and the equipment and procedures for handling emergencies.

B. There shall be written protocols for the timely and safe transfer of patients to a prespecified hospital or hospitals within a reasonable proximity. For purposes of this section "reasonable proximity" shall mean a licensed general hospital capable of providing necessary services within 30 minutes notice to the hospital. There shall be a written or electronic transfer agreement with such hospital or hospitals.

18VAC85-20-380. Discharge policies and procedures.

A. There shall be written policies and procedures outlining discharge criteria. Such criteria shall include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain, and minimal nausea and vomiting.

B. Discharge from anesthesia care is the responsibility of the health care practitioner providing or the doctor supervising the anesthesia care and shall only occur when: (i) patients have met specific physician-defined criteria; and (ii) ordered by the health care practitioner providing or the doctor supervising the anesthetic care.

C. Written instructions and an emergency phone number shall be provided to the patient. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

D. At least one person trained in advanced resuscitative techniques shall be immediately available until all patients are discharged.

Agency Plan for Disposition of Request: The petition will be published on September 8, 2014, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at http://www.townhall.virginia.gov to receive public comment ending October 8, 2014. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting on October 16, 2014.

Public Comment Deadline: October 8, 2014.

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

VA.R. Doc. No. R15-01; Filed August 8, 2014, 3:27 p.m.

Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Sue Cressel.

Nature of Petitioner's Request: To amend 18VAC85-20-90, which sets out the requirements for prescribing weight-loss drugs, to allow nurse practitioners to prescribe without the patient being seen by the physician.

Agency Decision: Request granted.

Statement of Reason for Decision: The board voted to accept the petition and initiate rulemaking. The amended rule will authorize a nurse practitioner to perform the physical examination, order and evaluate tests and prescribe Schedule III through VI drugs for obesity, provided such authorization is specified in the practice agreement with the patient care team physician with whom she/he has a collaborative arrangement.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960

Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R14-20; Filed August 8, 2014, 9:11 a.m.

BOARD OF NURSING

Agency Decision

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

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

Name of Petitioner: Ashley Church.

Nature of Petitioner's Request: To amend the listing of approved providers of continuing education for nurses to include trainings or courses offered through grant funding by other state agencies.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Nursing considered the request at its meeting on July 15, 2014, and decided to initiate rulemaking. An amendment to 18VAC90-20-221 was adopted to add "state and federal government agencies" to the list of providers which may recognize or approve workshops, seminars, conferences or courses that are relevant to the practice of nursing. The amendment was adopted as a fast-track action, but will not become effective until approved by the Governor.

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

VA.R. Doc. No. R14-28; Filed August 8, 2014, 9:18 a.m.

BOARD OF PHYSICAL THERAPY

Agency Decision

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

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

Name of Petitioner: Frederick Tarantino.

Nature of Petitioner's Request: To define an accredited educational program in physical therapy as one that reviews applicants convicted of prior criminal acts on a case-by-case basis to the extent that doing so does not conflict with the laws of Virginia.

Agency Decision: Request denied.

Statement of Reason for Decision: In its regulations, the board has defined an "approved program" as meaning an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association. The board relies on the Commission for appropriate oversight of physical therapy assistant programs. To redefine the meaning of an "approved program" as requested in the petition would be a departure from its long-standing policy of accepting national accreditation for physical therapy education. While the board appreciates the dilemma created by the college's admission policy, it does not believe it is appropriate to redefine the meaning of an approved program to impose different criteria for acceptance. Therefore, the board has rejected the petition and will not initiate rulemaking. The oversight agency for community colleges in Virginia is the State Council of Higher Education for Virginia. The board requested that the Executive Director send a letter to NOVA CC with a copy to SCHEV explaining its licensure process and the factors it considers in making a licensure decision.

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

VA.R. Doc. No. R14-32; Filed August 8, 2014, 9:08 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4VAC20-751-20).**

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

Effective Dates: August 27, 2014, through September 26, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

The amendments (i) remove the tending requirement for small-mesh gill nets on the ocean side of Northampton and Accomack counties from August 15 through October 15 and (ii) prohibit the use of agents in the Assateague Island Small-Mesh Gill Net Area but provide the commissioner discretionary authority to permit such use.

4VAC20-751-20. Gill net mesh sizes, restricted areas, and season.

A. From January 1 through March 25 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3-3/4 inches and six inches within the restricted areas as set forth below, except that from January 16 through the end of February any legally licensed fisherman may place, set, or fish any gill net with a stretched mesh size from five inches to six inches within the restricted areas described in this subsection. From March 26 through June 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches within the restricted areas set forth below, except as described in 4VAC20-252-135:

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;

2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;

3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;

4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;

5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;

6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;

7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and

8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

B. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish more than 8,400 feet of gill net.

C. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net in the Chesapeake Bay or in Virginia's portion of the Territorial Sea, that is made, set or fished in a tied-down manner, by connecting the net's head rope and foot rope with lines, which cause the net to form a pocket of webbing.

D. During the period June 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net with a stretched mesh greater than six inches in the Virginia portion of the Territorial Sea, south of a line connecting Smith Island Light and the three-mile limit line.

E. From June 1 through ~~October 15~~ August 14, it shall be unlawful for any person to place any unattended small-mesh gill net within 500 yards of the mean ~~high-water~~ low-water mark, on the ocean side of Northampton and Accomack counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line.

F. It shall be unlawful for any person to use any agent to place, set, or fish any gill net within 500 yards of the mean low-water mark, within the Assateague Island Small-Mesh Gill Net Area, from August 15 through October 31. The commissioner, or his designee, may approve the use of an agent if the legally licensed person can document a significant hardship on the basis of health that impedes the retrieval of any gill nets within the Assateague Island Small-Mesh Gill Net Area.

VA.R. Doc. No. R15-4153; Filed August 27, 2014, 1:48 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A

11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4VAC20-751-15; adding 4VAC20-751-25).**

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

Effective Date: August 27, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) establish the Assateague Island Small-Mesh Gill Net Area, (ii) limit the amount and size of gill nets set by an individual within the Assateague Island Small-Mesh Gill Net Area from August 15 through October 31, and (iii) define "small-mesh gill net."

4VAC20-751-15. Definitions.

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

"Assateague Island Small-Mesh Gill Net Area" shall consist of all tidal waters of Virginia's portion of the federal territorial sea that are bounded by a line beginning in Accomack County from a point at the mean low water line at the southwestern most tip of Fishing Point, at the mouth of Chincoteague Inlet, at Latitude 37-52.34584 N., Longitude 75-24.02333 W.; thence southwesterly 1,500 feet to a point at Latitude 37-52.19158 N., Longitude 75-24.26693 W.; thence in a line towards Chincoteague Shoals maintaining a distance of 1,500 feet from the mean low water line to a point northeast of Chincoteague Shoals at Latitude 37-51.12484 N., Longitude 75-22.23021 W.; thence westerly to a point at Latitude 37-51.30530 N., Longitude 75-22.44331 W.; thence along the mean low water line in a southerly and then westerly direction to the point of beginning.

"Small-mesh gill net" means any gill net with a stretched mesh of equal to or less than five inches.

"Unattended gill net" means any gill net set in Virginia tidal waters, described in 4VAC20-751-20 E, that is located more than one mile from the licensee of that gill net.

4VAC20-751-25. Assateague Island Small-Mesh Gill Net Area.

Within the Assateague Island Small-Mesh Gill Net Area, it shall be unlawful for any person to place, set, or fish more than two gill nets, with each gill net not to exceed 1,200 feet in length, per vessel, from August 15 through October 31.

VA.R. Doc. No. R15-4140; Filed August 27, 2014, 1:44 p.m.

◆ ◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Health Commissioner is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Health Commissioner will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-70).**

Statutory Authority: §§ 22.1-271.2, 32.1-12, and 32.1-46 of the Code of Virginia.

Effective Date: October 10, 2014.

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

Summary:

This action conforms the immunization requirements for school children to changes in the Code of Virginia enacted by Chapter 344 of the 2014 Acts of Assembly. The amendments (i) remove certain booster dose requirements at the entry into sixth grade, (ii) delete "susceptible" from the varicella vaccine requirement, and (iii) modify the pneumococcal vaccine requirement to include children up to 60 months of age.

Part III
Immunization Requirements

12VAC5-110-70. Immunization requirements.

Every student enrolling in a school shall provide documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subdivisions, as appropriate for his age according to the immunization schedule. Spacing, minimum ages, and minimum intervals shall be in accordance with the immunization schedule. A copy of every student's immunization record shall be on file in his school record.

1. Diphtheria Toxoid. A minimum of four properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday. ~~A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of diphtheria toxoid.~~

2. Tetanus Toxoid. A minimum of four properly spaced doses of tetanus toxoid. One dose shall be administered on

or after the fourth birthday. ~~A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of tetanus toxoid.~~

3. Acellular Pertussis Vaccine. A minimum of four properly spaced doses of acellular pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade ~~if at least five years have passed since the last dose of pertussis vaccine~~.

4. Poliomyelitis Vaccine. A minimum of four doses of poliomyelitis vaccine with one dose administered on or after the fourth birthday.

5. Measles (Rubeola) Vaccine. One dose of live measles vaccine administered at age 12 months or older, and a second dose administered prior to entering kindergarten.

6. Rubella Vaccine. A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

7. Mumps Vaccine. One dose of mumps virus vaccine administered at age 12 months or older and a second dose administered prior to entering kindergarten.

8. Haemophilus Influenzae Type b (Hib) Vaccine. A complete series of Hib vaccine (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH ~~213F~~ 213G pertaining to Hib vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 60 months of age or for admission to any grade level, kindergarten through grade 12.

9. Hepatitis B Vaccine. A minimum of three doses of hepatitis B vaccine for all children. The FDA has approved a two-dose schedule only for adolescents 11 through 15 years of age and only when the Merck brand (RECOMBIVAX HB) Adult Formulation Hepatitis B vaccine is used. The two RECOMBIVAX HB adult doses must be separated by a minimum of four months. The two dose schedule using the adult formulation must be clearly documented in the Hepatitis B section on Form MCH ~~213F~~ 213G.

10. Varicella (Chickenpox) Vaccine. All ~~susceptible~~ children born on and after January 1, 1997, shall be required to have one dose of chickenpox vaccine on or after 12 months of age and a second dose administered prior to entering kindergarten.

11. Pneumococcal Conjugate Vaccine (PCV). A complete series of PCV~~,~~ (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH ~~213F~~ 213G pertaining to PCV vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than ~~24~~ 60 months of age.

12. Human Papillomavirus (HPV) Vaccine. Three doses of properly spaced HPV vaccine for females, effective October 1, 2008. The first dose shall be administered before the child enters the sixth grade.

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

FORMS (12VAC5-110)

Certificate of Religious Exemption, CRE-1 (rev. 00/92) ~~(eff. 7/83).~~

~~School Entrance Physical Examination and Immunization Certification, MCH 213F (rev. 04/07).~~

School Entrance Health Form, Health Information Form/Comprehensive Physical Examination Report/Certification of Immunization, MCH 213G (rev. 3/14)

VA.R. Doc. No. R15-4031; Filed August 12, 2014, 11:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Health Commissioner is claiming an exclusion from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Health Commissioner will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-10, 12VAC5-590-630, 12VAC5-590-690).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: October 10, 2014.

Agency Contact: Robert Payne, Legal Affairs Division Officer, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

Summary

To conform to changes in the Code of Virginia enacted by Chapter 333 of the 2014 Acts of Assembly, the amendments (i) remove the definition of "domestic use or usage," (ii) add a definition for "human consumption," (iii) revise the definitions of "pure water" and "waterworks," and (iv) make necessary changes in other sections to reflect the changes in definitions.

Part I
General Framework for Waterworks Regulations

Article 1
Definitions

12VAC5-590-10. Definitions.

As used in this chapter, the following words and terms shall have meanings respectively set forth unless the context clearly requires a different meaning:

"Action level" means the concentration of lead or copper in water specified in 12VAC5-590-385, which determines, in some cases, the treatment requirements contained in 12VAC5-590-405 that an owner is required to complete.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying pure water to a tank, plumbing fixture, or other device and the rim of the receptacle.

"Annual daily water demand" means the average rate of daily water usage over at least the most recent three-year period.

"Applied water" means water that is ready for filtration.

"Approved" means material, equipment, workmanship, process or method that has been accepted by the commissioner as suitable for the proposed use.

"Auxiliary water system" means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes, or streams; ~~or~~ process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

"Backflow prevention device" means any approved device, method, or type of construction intended to prevent backflow into a waterworks.

"Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best available technology ~~(BAT)"~~ or "BAT" means the best technology, treatment techniques, or other means that the commissioner finds, after examination for efficacy under field conditions and not solely under laboratory conditions and in conformance with applicable EPA regulations, are available (taking cost into consideration).

"Board" means the State Board of Health.

"Breakpoint chlorination" means the addition of chlorine to water until the chlorine demand has been satisfied and further additions result in a residual that is directly proportional to the amount added.

"Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Chlorine" means dry chlorine.

"Chlorine gas" means dry chlorine in the gaseous state.

"Chlorine solution (chlorine water)" means a solution of chlorine in water.

"Chronically noncompliant waterworks" or "CNC" means a waterworks that is unable to provide pure water for any of the following reasons: (i) the waterworks' record of performance demonstrates that it can no longer be depended upon to furnish pure water to the persons served; (ii) the owner has inadequate technical, financial, or managerial capacity to furnish pure water to the people served; (iii) the owner has failed to comply with an order issued by the board or the commissioner; (iv) the owner has abandoned the waterworks and has discontinued supplying pure water to the persons served; or (v) the owner is subject to a forfeiture order pursuant to § 32.1-174.1 of the Code of Virginia.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

"Coliform bacteria group" means a group of bacteria predominantly inhabiting the intestines of man or animal but also occasionally found elsewhere. It includes all aerobic and facultative anaerobic, gram-negative, non-sporeforming bacilli that ferment lactose with production of gas. Also included are all bacteria that produce a dark, purplish-green colony with metallic sheen by the membrane filter technique used for coliform identification.

"Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale waterworks and of the consecutive waterworks that receive finished water.

"Commissioner" means the State Health Commissioner.

"Community waterworks" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks shall monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001.

"Comprehensive performance evaluation" or "(CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operational and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 12VAC5-590-530 C 1 b (2), the comprehensive performance evaluation shall consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks that has no water production or source facility of its own and that obtains all of its water from another permitted waterworks or receives some or all of its finished water from one or more wholesale waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

"Consumer" means any person who drinks water from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Cross connection" means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

"CT" or "CT_{calc}" means the product of "residual disinfectant concentration" (C) in mg/L determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, (i.e., "C" x "T").

"Daily fluid intake" means the daily intake of water for drinking and culinary use and is defined as two liters.

"Dechlorination" means the partial or complete reduction of residual chlorine in water by any chemical or physical process at a waterworks with a treatment facility.

"Degree of hazard" means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfectant" means any oxidant (including chlorine) that is added to water in any part of the treatment or distribution process for the purpose of killing or deactivating pathogenic organisms.

"Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration ("C") is measured.

"Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of Giardia lamblia or virus inactivation through the treatment plant.

"Distribution main" means a water main whose primary purpose is to provide treated water to service connections.

"District ~~Engineer~~ engineer" means the employee assigned by the Commonwealth of Virginia, Department of Health, Office of Drinking Water to manage its regulatory activities in a geographical area of the state consisting of a state planning district or subunit of a state planning district.

"Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a waterworks with more than one service connection that is

limited to the specific service connection from which the coliform positive sample was taken.

~~"Domestic use or usage" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).~~

"Double gate-double check valve assembly" means an approved assembly composed of two single independently acting check valves including tightly closing shutoff valves located at each end of the assembly and petcocks and test gauges for testing the watertightness of each check valve.

"Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation (IDSE) under 12VAC5-590-370 B 3 e (2) and determining compliance with the TTHM and HAA5 MCLs under 12VAC5-590-370 B 3 e (3).

"Effective corrosion inhibitor residual" means, for the purpose of 12VAC5-590-405 A 1 only, a concentration sufficient to form a passivating film on the interior walls of a pipe.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system.

"Equivalent residential connection" means a volume of water used equal to a residential connection that is 400 gallons per day unless supportive data indicates otherwise.

"Exception" means an approved deviation from a "shall" criteria contained in Part III (12VAC5-590-640 et seq.) of this chapter.

"Exemption" means a conditional waiver of a specific PMCL or treatment technique requirement that is granted to a specific waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Finished water" means water that is introduced into the distribution system of a waterworks and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

"First draw sample" means a one-liter sample of tap water, collected in accordance with 12VAC5-590-375 B 2, that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" means a course of running water flowing in a definite channel.

"Free available chlorine" means that portion of the total residual chlorine remaining in water at the end of a specified contact period that will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with 12VAC5-590-410 C 2 b (1) (b) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district, or any other governmental body established under the Code of Virginia, including departments, divisions, boards, or commissions.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water (or surface water sources).

"Groundwater system" means any waterworks that uses groundwater as its source of supply; however, a waterworks that combines all its groundwater with surface water or with groundwater under the direct influence of surface water prior to treatment is not a groundwater system. Groundwater systems include consecutive waterworks that receive finished groundwater from a wholesale waterworks.

"Groundwater under the direct influence of surface water" or "GUDI" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium. It also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that

closely correlate to climatological or surface water conditions. The commissioner in accordance with 12VAC5-590-430 will determine direct influence of surface water.

"Haloacetic acids (five)" or "(HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"Health regulations" means regulations that include all primary maximum contaminant levels, treatment technique requirements, and all operational regulations, the violation of which would jeopardize the public health.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Hypochlorite" means a solution of water and some form of chlorine, usually sodium hypochlorite.

"Initial compliance period" means for all regulated contaminants, the initial compliance period is the first full three-year compliance period beginning at least 18 months after promulgation with the exception of waterworks with 150 or more service connections for contaminants listed at Table 2.3, VOC 19-21; Table 2.3, SOC 19-33; and antimony, beryllium, cyanide (as free cyanide), nickel, and thallium that shall begin January 1993.

"Interchangeable connection" means an arrangement or device that will allow alternate but not simultaneous use of two sources of water.

"Karst geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. Such areas often feature sinkholes, caverns, and sinking or disappearing creeks. In Virginia, this generally includes all that area west of the Blue Ridge and, in Southwest Virginia, east of the Cumberland Plateau.

"Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Large waterworks" means, for the purposes of 12VAC5-590-375, 12VAC5-590-405, 12VAC5-590-530 D, and 12VAC5-590-550 D only, a waterworks that serves more than 50,000 persons.

"Lead free" means the following:

1. When used with respect to solders and flux, refers to solders and flux containing not more than 0.2% lead;

2. When used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing not more than 8.0% lead;

3. When used with respect to plumbing fittings and fixtures intended by the plumbing manufacturer to dispense water for human ingestion, refers to fittings and fixtures that are in compliance with standards established in accordance with 42 USC § 300g-6(e).

"Lead service line" means a service line made of lead that connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting that is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease disease.

"Liquid chlorine" means a liquefied, compressed chlorine gas as shipped in commerce.

"Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Log inactivation (log removal)" means that a 99% reduction is a 2-log inactivation; a 99.9% reduction is a 3-log inactivation; a 99.99% reduction is a 4-log inactivation.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in the most current edition of "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum daily water demand" means the rate of water usage during the day of maximum water use.

"Maximum contaminant level (MCL)" or "MCL" means the maximum permissible level of a contaminant in pure water that is delivered to any user of a waterworks. MCLs are set as close to the MCLGs as feasible using the best available treatment technology. MCLs may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL) meaning based on aesthetic considerations.

"Maximum residual disinfectant level (MRDL)" or "MRDL" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a waterworks is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a waterworks is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples

exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in Table 2.12, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal ~~(MRDLG)~~" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and that allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential ~~(MTP)~~" or "MTP" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25°C or above.

~~"Medium-size~~ "Medium waterworks~~,~~" means, for the purpose of 12VAC5-590-375~~,~~ and 12VAC5-590-405~~, 12VAC5-590-530, and 12VAC5-590-550 D~~ only, a waterworks that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" means a pressure or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and that has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Most probable number ~~(MPN)~~" or "MPN" means that number of organisms per unit volume that, in accordance with statistical theory, would be more likely than any other number to yield the observed test result or that would yield the observed test result with the greatest frequency, expressed as density of organisms per 100 milliliters. Results are computed from the number of positive findings of coliform-group organisms resulting from multiple-portion decimal-dilution plantings.

"Noncommunity waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity waterworks ~~(NTNC)~~" or "NTNC" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Office" or "ODW" means the Commonwealth of Virginia, Department of Health, Office of Drinking Water.

"One hundred year flood level" means the flood elevation that will, over a long period of time, be equaled or exceeded on the average once every 100 years.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government that supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Picocurie ~~(pCi)~~" or "pCi" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device ~~(POE)~~" or "POE device" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use treatment device ~~(POU)~~" or "POU device" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that

tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

"Pollution hazard" means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

"Post-chlorination" means the application of chlorine to water subsequent to treatment.

"Potable water" – see "Pure water."

"Practical quantitation level ~~(PQL)~~" or "PQL" means the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions.

"Prechlorination" means the application of chlorine to water prior to filtration.

"Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Process fluids" means any fluid or solution that may be chemically, biologically, or otherwise contaminated or polluted that would constitute a health, pollutional, or system hazard if introduced into the waterworks. This includes, but is not limited to:

1. Polluted or contaminated water;

2. Process waters;

3. Used waters, originating from the waterworks that may have deteriorated in sanitary quality;

4. Cooling waters;

5. Contaminated natural waters taken from wells, lakes, streams, or irrigation systems;

6. Chemicals in solution or suspension; and

7. Oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes, or for fire fighting purposes.

"Pure water" means water fit for human consumption ~~and domestic use~~ that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts ~~for domestic usage in the area served~~ and ~~normally~~ (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Raw water main" means a water main that conveys untreated water from a source to a treatment facility.

"Reduced pressure principle backflow prevention device ~~(RPZ device)~~" or "RPZ device" means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit shall include tightly closing shutoff valves located at each end of the device, and each device shall be fitted with properly located test cocks. These devices shall be of the approved type.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A ~~"~~millirem~~"~~ (MREM) is 1/1000 of a REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration" ("C" in CT Calculations) means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Responsible charge" means designation by the owner of any individual to have duty and authority to operate or modify the operation of waterworks processes.

"Sanitary facilities" means piping and fixtures, such as sinks, lavatories, showers, and toilets, supplied with potable water and drained by wastewater piping.

"Sanitary survey" means an evaluation conducted by ODW of a waterworks' water supply, facilities, equipment, operation, maintenance, monitoring records. and overall management of a waterworks to ensure the provision of pure water.

"Secondary water source" means any approved water source, other than a waterworks' primary source, connected to or available to that waterworks for emergency or other nonregular use.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;

2. If a meter is not installed, the service connection is the point of connection to the waterworks;

3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

"Service line sample" means a one-liter sample of water, collected in accordance with 12VAC5-590-375 B 2 c, that has been standing for at least six hours in a service line.

"Sewer" means any pipe or conduit used to convey sewage or industrial waste streams.

"Significant deficiency" means any defect in a waterworks' design, operation, maintenance, or administration, as well as the failure or malfunction of any waterworks component, that may cause, or has the potential to cause, an unacceptable risk to health or could affect the reliable delivery of pure water to consumers.

"Single-family structure," means, for the purpose of 12VAC5-590-375 B only, a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

"Small waterworks" means, for the purpose of 12VAC5-590-375, 12VAC5-590-405, 12VAC5-590-530 D and 12VAC5-590-550 D only, a waterworks that serves 3,300 persons or fewer.

"Standard sample" means that portion of finished drinking water that is examined for the presence of coliform bacteria.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m-1) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Synthetic organic chemicals ~~(SOC)~~" or "SOC" means one of the family of organic man-made compounds generally utilized for agriculture or industrial purposes.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"Terminal reservoir" means an impoundment providing end storage of water prior to treatment.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total effective storage volume" means the volume available to store water in distribution reservoirs measured as the difference between the reservoir's overflow elevation and the minimum storage elevation. The minimum storage elevation is that elevation of water in the reservoir that can provide a minimum pressure of 20 psi at a flow as determined in 12VAC5-590-690 C to the highest elevation served within that reservoir's service area under systemwide maximum daily water demand.

"Total organic carbon" ~~(TOC)~~ or "TOC" means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes ~~(TTHM)~~" or "TTHM" means the sum of the concentrations of the trihalomethanes expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of these regulations, the TTHM's shall mean trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transmission main" means a water main whose primary purpose is to move significant quantities of treated water among service areas.

"Treatment technique requirement" means a requirement that specifies for a contaminant a specific treatment technique(s) demonstrated to the satisfaction of the division to lead to a reduction in the level of such contaminant sufficient to comply with these regulations.

"Triggered source water monitoring" means monitoring required of any groundwater system as a result of a total coliform-positive sample in the distribution system.

"Trihalomethane ~~(THM)~~" or "THM" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Two-stage lime softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens (except residual disinfection) and is directly open to the atmosphere.

"Unregulated contaminant ~~(UC)~~" or "UC" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"Used water" means any water supplied by a water purveyor from the waterworks to a consumer's water system after it has passed through the service connection.

"Variance" means a conditional waiver of a specific regulation that is granted to a specific waterworks. A PMCL Variance is a variance to a Primary Maximum Contaminant Level, or a treatment technique requirement. An Operational Variance is a variance to an operational regulation or a Secondary Maximum Contaminant Level. Variances for monitoring, reporting and public notification requirements will not be granted.

"Virus" means a microbe that is infectious to humans by waterborne transmission.

"Volatile synthetic organic chemical ~~(VOC)~~" or "VOC" means one of the family of manmade organic compounds generally characterized by low molecular weight and rapid vaporization at relatively low temperatures or pressures.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks that

is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water purveyor" (same as owner).

"Water supply" means water that shall have been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply" shall not include any waters above the point of intake of such waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Water supply main" or "main" means any water supply pipeline that is part of a waterworks distribution system.

"Water Well Completion Report" means a report form published by the State Water Control Board entitled "Water Well Completion Report," which requests specific information pertaining to the ownership, driller, location, geological formations penetrated, water quantity and quality encountered as well as construction of water wells. The form is to be completed by the well driller.

"Waterworks" means a system that serves piped water for ~~drinking or domestic use~~ human consumption to ~~(i) the public, (ii)~~ at least 15 service connections~~,~~ or ~~(iii) an average of~~ 25 or more individuals for at least 60 days out of the year. ~~The term "waterworks" shall include~~ "Waterworks" includes all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Waterworks with a single service connection" means a waterworks that supplies drinking water to consumers via a single service line.

"Wholesale waterworks" means a waterworks that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

12VAC5-590-630. Backflow prevention devices.

A. Any backflow prevention device shall be of the approved type and shall comply with the Uniform Statewide Building Code.

B. Any backflow prevention device shall be installed in a manner approved by the water purveyor and in accordance with the Uniform Statewide Building Code.

C. Existing backflow prevention devices approved by the purveyor and the division prior to the effective date of this chapter shall, except for inspection, testing, and maintenance requirements, be excluded from the requirements of 12VAC5-590-600 A and B if the water purveyor and the division are assured that the devices will protect the waterworks.

TABLE 2.10. DETERMINATION OF DEGREE OF HAZARD

Premises with one or more of the following conditions shall be rated at the corresponding degree of hazard.	
High Hazard	–The contaminant would be toxic, poisonous, noxious or unhealthy.
	–A health hazard would exist.
	–A high probability exists of a backflow occurrence either by back pressure or by back siphonage.
	–The contaminant would disrupt the service of piped water for ~~drinking or domestic use~~ human consumption.
	–Examples - sewage, used water, nonpotable water, auxiliary water systems, toxic or hazardous chemicals, etc.
Moderate Hazard	–The contaminant would only degrade the quality of the water aesthetically or impair the usefulness of the water.
	–A health hazard would not exist.
	–A moderate probability exists of a backflow occurrence either by back pressure or by back siphonage.
	–The contaminant would not seriously disrupt service of piped water for ~~drinking or domestic use~~ human consumption.
	–Examples - ~~Food~~ food stuff, nontoxic chemicals, nonhazardous chemicals, etc.
Low Hazard	–The contaminant would only degrade the quality of the water aesthetically.
	–A health hazard would not exist.
	–A low probability exists of the occurrence of backflow primarily by back siphonage.
	–The contaminant would not disrupt service of piped water.
	–Examples - food stuff, nontoxic

	chemicals, nonhazardous, chemicals, etc.

12VAC5-590-690. Capacity of waterworks.

The design capacity of the waterworks shall exceed the maximum daily water demand of the system. Waterworks shall normally be designed on the following basis of water consumption. If deviations are made, they shall be based on sound engineering knowledge substantiated in the designer's report and approved by the division.

A. Daily water consumption rates (annual daily water demand):

Dwellings, per person	100 gpd
High schools with showers, per person	16 gpd
Elementary schools without showers, per person	10 gpd
Boarding schools, per person	75 gpd
Motels at 65 gallons per person, minimum per room	130 gpd
Trailer courts at three persons per trailer, per trailer	300 gpd
Restaurants, per seat	50 gpd
Interstate or through highway restaurants, per seat	180 gpd
Interstate rest areas, per person	5 gpd
Service stations, per vehicle served	10 gpd
Factories, per person, per eight-hour shift	15-35 gpd
Shopping centers, per 1,000 sq.ft. of ultimate floor space~~200~~	200-300 gpd
Hospitals, per bed	300 gpd
Nursing homes, per bed	200 gpd
Home for the aged, per bed	100 gpd
Doctor's office in medical center	500 gpd
Laundromats, 9 to 12# machines, per machine	500 gpd
Community colleges per student and faculty member	15 gpd
Swimming pools, per swimmer	10 gpd
Theaters, drive-in type, per car	5 gpd
Theaters, auditorium type, per seat	5 gpd
Picnic areas, per person	5 gpd
Camps, resort, day and night with limited plumbing, per camp site	50 gpd
Picnic areas, per person	5 gpd
Luxury Camps with flush toilets, per camp site	100 gpd

B. Minimum acceptable effective finished water storage for ~~domestic purposes~~ human consumption shall not be less than 200 gallons per equivalent residential connection at minimum pressure.

C. All waterworks shall provide at least a minimum working (under flow) pressure of 20 psi at the service connection based on the greater of maximum hour or maximum day plus applicable fire flows. Applicable fire flows shall be selected by coordination between the water supply owner, design consultant, local officials and local fire marshall. When the number of residential units is less than 1,000, the formula $Q=11.4N^{0.544}$; is acceptable for estimating maximum hour domestic demand flow, where Q=total gallons per minute and N=total number of residential units. The division can require a higher design pressure if indicated by site conditions.

D. A waterworks utilizing wells as the sole source of supply shall provide source capacity of a minimum of 0.5 gallons per minute per equivalent residential connection.

E. Waterworks serving 50 or more residential connections with wells as the source of supply shall provide at least two water sources ~~which~~ that do not hydraulically interfere with another source of public water supply. Consideration shall be given to requiring each source to be of a minimum yield so its reliability is realistic. The secondary well should be rated at 20% of the waterworks capacity as a minimum.

F. Waterworks serving less than 50 residential connections with wells as the source of supply shall provide or have access to an auxiliary pump stored or stocked locally or they shall provide 48 hours of total effective storage volume based on water usage.

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

FORMS (12VAC5-590)

Water Well Completion Report, Form GW-2, Virginia Department of Environmental Quality (rev. 7/07)

VA.R. Doc. No. R15-4020; Filed August 19, 2014, 9:12 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Health Commissioner is claiming an exclusion from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code

of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Health Commissioner will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-600. Waterworks Operation Fee (amending 12VAC5-600-10).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: October 10, 2014.

Agency Contact: Robert Payne, Legal Affairs Division Officer, Office of Drinking Water, Department of Health, 109 Governor Street, Richmond, VA, telephone (804) 864-7498, FAX (804) 864-7521, or email rob.payne@vdh.virginia.gov.

Summary

To conform to changes in the Code of Virginia enacted by Chapter 333 of the 2014 Acts of Assembly, the amendments revise the definition of "waterworks."

12VAC5-600-10. Definitions.

As used in this chapter, unless otherwise defined, words and terms are the same as those in § 32.1-167 of the Code of Virginia or in 12VAC5-590-10 (Waterworks Regulations) and shall have the following ~~meaning,~~ meanings unless the context clearly indicates otherwise:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner who is the executive officer of the State Board of Health.

"Community waterworks" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Customer account" means (i) a metered or unmetered potable water service connection to the customer ~~which~~ that is billed in any way by the waterworks owner~~;~~ or (ii) where any community waterworks sends no billing, the customer accounts shall be defined as equal to the population served divided by four.

"Department" means the Virginia Department of Health.

"Due" means received or postmarked by the stated date.

"Fiscal year" means the year from July 1 to June 30.

"Nontransient noncommunity ~~(NTNC)~~ waterworks" or "NTNC" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Owner" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government~~, which~~ that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;

2. If a meter is not installed, the service connection is the point of connection to the waterworks; or

3. When the waterworks owner is also the building owner, the service connection is the entry point to the building.

"Waterworks" means a system that serves piped water for ~~drinking or domestic use~~ human consumption to ~~(i) the public, (ii)~~ at least 15 service connections~~,~~ or ~~(iii) an average of~~ 25 or more individuals for at least 60 days out of the year. ~~The term "waterworks" shall include~~ "Waterworks" includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

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

FORMS (12VAC5-600)

~~Waterworks Operation Fee - Invoice/Data Verification Notice - less than $400 (rev. 7/12).~~

~~Waterworks Operation Fee - Invoice/Data Verification Notice - $400 or more (rev. 7/12).~~

Waterworks Operation Fee - Invoice/Data Verification Notice - less than $400 (rev. 8/14)

Waterworks Operation Fee - Invoice/Data Verification Notice - $400 or more (rev. 8/14)

VA.R. Doc. No. R15-4064; Filed August 19, 2014, 9:13 a.m.

BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Behavioral Health and Developmental Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of Behavioral Health and Developmental Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC35-115. Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (amending 12VAC35-115-50, 12VAC35-115-70,**

12VAC35-115-80, 12VAC35-115-110, 12VAC35-115-146, 12VAC35-115-210, 12VAC35-115-220, 12VAC35-115-230).

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

Effective Date: October 8, 2014.

Agency Contact: Linda Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

Summary:

The amendments (i) correct references to the Code of Virginia and the Virginia Administrative Code, (ii) change references to the inspector general to the Office of the State Inspector General and add the appropriate citation to Virginia law, and (iii) correct a misspelling.

Part III

Explanation of Individual Rights and Provider Duties

12VAC35-115-50. Dignity.

A. Each individual has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations, except as specifically limited herein. Each individual has a right to have services that he receives respond to his needs and preferences and be person-centered. Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers shall not partially or totally take away or limit these rights solely because an individual has a mental illness, mental retardation, or substance use disorder and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name. The use of an individual's preferred name may be limited when a licensed professional makes the determination that the use of the name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress, and recovery. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.

2. Be protected from harm including abuse, neglect, and exploitation.

3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.

4. Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia), and employees of the protection and advocacy agency.

5. Be provided with general information about program services, policies, and rules in writing and in the manner, format and language easily understood by the individual.

6. Be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

C. In services provided in residential and inpatient settings, each individual has the right to:

1. Have sufficient and suitable clothing for his exclusive use.

2. Receive nutritionally adequate, varied, and appetizing meals that are prepared and served under sanitary conditions, are served at appropriate times and temperatures, and are consistent with any individualized diet program.

3. Live in a humane, safe, sanitary environment that gives each individual, at a minimum:

a. Reasonable privacy and private storage space;

b. An adequate number of private, operating toilets, sinks, showers, and tubs that are designed to accommodate individuals' physical needs;

c. Direct outside air provided by a window that opens or by an air conditioner;

d. Windows or skylights in all major areas used by individuals;

e. Clean air, free of bad odors; and

f. Room temperatures that are comfortable year round and compatible with health requirements.

4. Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to the individual or others and do not infringe on the freedom of others.

a. Religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices may be limited. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation. The reasons for the restriction shall be documented in the individual's services record.

b. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.

5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request. However, if an individual has funds to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.

6. Communicate privately with any person by mail and have help in writing or reading mail as needed.

a. An individual's access to mail may be limited only if the provider has reasonable cause to believe that the mail contains illegal material or anything dangerous. If so, the director or his designee may open the mail, but not read it, in the presence of the individual.

b. An individual's ability to communicate by mail may be limited if, in the judgment of a licensed professional, the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health.

c. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.

7. Communicate privately with any person by telephone and have help in doing so. Use of the telephone may be limited to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

a. An individual's access to the telephone may be limited only if, in the judgment of a licensed professional, communication with another person or persons will result in demonstrable harm to the individual or significantly affect his treatment.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse services providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit the use of the telephone during the initial phase of treatment when sound therapeutic practice requires restriction, subject to the following conditions:

(1) Prior to implementation and when it proposes any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) When an individual applies for admission, the provider shall notify him of these restrictions.

8. Have or refuse visitors.

a. An individual's access to visitors may be limited or supervised only when, in the judgment of a licensed professional, the visits result in demonstrable harm to the individual or significantly affect the individual's treatment or when the visitors are suspected of bringing contraband or threatening harm to the individual in any other way.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse service providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit visitors during the initial phase of treatment when sound therapeutic practice requires the restriction, subject to the following conditions:

(1) Prior to implementation and when proposing any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) The provider shall notify individuals who apply for admission of these restrictions.

9. Nothing in these provisions shall prohibit a provider from stopping, reporting, or intervening to prevent any criminal act.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times. In the case of a minor, providers shall take into consideration the expressed preferences of the minor and the parent or guardian.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

3. Providers shall assure the following relative to abuse, neglect, and exploitation:

a. Policies and procedures governing harm, abuse, neglect, and exploitation of individuals receiving their services shall require that, as a condition of employment

or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director.

b. The director shall immediately take necessary steps to protect the individual until an investigation is complete. This may include the following actions:

(1) Direct the employee or employees involved to have no further contact with the individual. In the case of incidents of peer-on-peer aggression, protect the individuals from the aggressor in accordance with sound therapeutic practice and these regulations.

(2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.

(3) Temporarily suspend the involved employee or employees pending completion of an investigation.

c. The director shall immediately notify the human rights advocate and the individual's authorized representative. In no case shall notification be later than 24 hours after the receipt of the initial allegation of abuse, neglect, or exploitation.

d. In no case shall the director punish or retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.

e. The director shall initiate an impartial investigation within 24 hours of receiving a report of potential abuse or neglect. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.

(1) The investigator shall make a final report to the director or the investigating authority and to the human rights advocate within 10 working days of appointment. Exceptions to this time frame may be requested and approved by the department if submitted prior to the close of the sixth day.

(2) The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of the evidence.

(3) If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be documented and reported as required by 12VAC35-115-230.

(4) In all cases, the director shall provide his written decision, including actions taken as a result of the investigation, within seven working days following the completion of the investigation to the individual or the individual's authorized representative, the human rights advocate, the investigating authority, and the involved employee or employees. The decision shall be in writing and in the manner, format, and language that is most easily understood by the individual.

(5) If the individual affected by the alleged abuse, neglect, or exploitation or his authorized representative is not satisfied with the director's actions, he or his authorized representative, or anyone acting on his behalf, may file a petition for an LHRC hearing under 12VAC35-115-180.

f. The director shall cooperate with any external investigation, including those conducted by the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia), the protection and advocacy agency, or other regulatory or enforcement agencies.

g. If at any time the director has reason to suspect that an individual may have been abused or neglected, the director shall immediately report this information to the appropriate local Department of Social Services (see §§ 63.2-1509 and 63.2-1606 of the Code of Virginia) and cooperate fully with any investigation that results.

h. If at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director or his designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.

4. Providers shall afford the individual the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

12VAC35-115-70. Participation in decision making and consent.

A. Each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him. This includes the right to:

1. Consent or not consent to receive or participate in services.

a. The ISP and discharge plan shall incorporate the individual's preferences consistent with his condition and need for service and the provider's ability to address them;

b. The individual's services record shall include evidence that the individual has participated in the development of his ISP and discharge plan, in changes to these plans, and in all other significant aspects of his treatment and services; and

c. The individual's services record shall include the signature or other indication of the individual's or his authorized representative's consent.

2. Give or not give informed consent to receive or participate in treatment or services that pose a risk of harm

greater than ordinarily encountered in daily life and to participate in human research except research that is exempt under § ~~37.2-162.17~~ 32.1-162.17 of the Code of Virginia. Informed consent is always required for surgical procedures, electroconvulsive treatment, or use of psychotropic medications.

a. To be informed, consent for any treatment or service must be based on disclosure of and understanding by the individual or his authorized representative of the following information:

(1) An explanation of the treatment, service, or research and its purpose;

(2) When proposing human research, the provider shall describe the research and its purpose, explain how the results of the research will be disseminated and how the identity of the individual will be protected, and explain any compensation or medical care that is available if an injury occurs;

(3) A description of any adverse consequences and risks associated with the research, treatment, or service;

(4) A description of any benefits that may be expected from the research, treatment, or service;

(5) A description of any alternative procedures that might be considered, along with their side effects, risks, and benefits;

(6) Notification that the individual is free to refuse or withdraw his consent and to discontinue participation in any treatment, service, or research requiring his consent at any time without fear or reprisal against or prejudice to him; and

(7) A description of the ways in which the individual or his authorized representative can raise concerns and ask questions about the research, treatment, or service to which consent is given.

b. Evidence of informed consent shall be documented in an individual's services record and indicated by the signature of the individual or his authorized representative on a form or the ISP.

c. Informed consent for electroconvulsive treatment requires the following additional components:

(1) Informed consent shall be in writing, documented on a form that shall become part of the individual's services record. This form shall:

(a) Specify the maximum number of treatments to be administered during the series;

(b) Indicate that the individual has been given the opportunity to view an instructional video presentation about the treatment procedures and their potential side effects; and

(c) Be witnessed in writing by a person not involved in the individual's treatment who attests that the individual has been counseled and informed about the treatment procedures and potential side effects of the procedures.

(2) Separate consent, documented on a new consent form, shall be obtained for any treatments exceeding the maximum number of treatments indicated on the initial consent form.

(3) Providers shall inform the individual or his authorized representative that the individual may obtain a second opinion before receiving electroconvulsive treatment and the individual is free to refuse or withdraw his consent and to discontinue participation at any time without fear of reprisal against or prejudice to him. The provider shall document such notification in the individual's services record.

(4) Before initiating electroconvulsive treatment for any individual under age 18 years, two qualified child psychiatrists must concur with the treatment. The psychiatrists must be trained or experienced in treating children or adolescents and not directly involved in treating the individual. Both must examine the individual, consult with the prescribing psychiatrist, and document their concurrence with the treatment in the individual's services record.

3. Have an authorized representative make decisions for him in cases where the individual has been determined to lack the capacity to consent or authorize the disclosure of information.

a. If an individual who has an authorized representative who is not his legal guardian objects to the disclosure of specific information or a specific proposed treatment or service, the director or his designee shall immediately notify the human rights advocate and authorized representative. A petition for LHRC review of the objection may be filed under 12VAC35-115-200.

b. If the authorized representative objects or refuses to consent to a specific proposed treatment or service for which consent is necessary, the provider shall not institute the proposed treatment, except in an emergency in accordance with this section or as otherwise permitted by law.

4. Be accompanied, except during forensic evaluations, by a person or persons whom the individual trusts to support and represent him when he participates in services planning, assessments, evaluations, including discussions and evaluations of the individual's capacity to consent, and discharge planning.

5. Request admission to or discharge from any service at any time.

B. The provider's duties.

1. Providers shall respect, protect, and help develop each individual's ability to participate meaningfully in decisions regarding all aspects of services affecting him. This shall be done by involving the individual, to the extent permitted

by his capacity, in decision making regarding all aspects of services.

2. Providers shall ask the individual to express his preferences about decisions regarding all aspects of services that affect him and shall honor these preferences to the extent possible.

3. Providers shall give each individual the opportunity and any help he needs to participate meaningfully in the preparation of his services plan, discharge plan, and changes to these plans, and all other aspects of services he receives. Providers shall document these opportunities in the individual's services record.

4. Providers shall obtain and document in the individual's services record the individual's or his authorized representative's consent for any treatment before it begins. If the individual is a minor in the legal custody of a natural or adoptive parent, the provider shall obtain this consent from at least one parent. The consent of a parent is not needed if a court has ordered or consented to treatment or services pursuant to § 16.1-241 C or D, 16.1-275, or 54.1-2969 A 1 or B of the Code of Virginia, or a local department of social services with custody of the minor has provided consent. Reasonable efforts must be made, however, to notify the parent or legal custodian promptly following the treatment or services. Additionally, a competent minor may independently consent to treatment for sexually transmitted or contagious diseases, family planning or pregnancy, or outpatient services or treatment for mental illness, emotional disturbance, or substance use disorders pursuant to § 54.1-2969 E of the Code of Virginia.

5. Providers may initiate, administer, or undertake a proposed treatment without the consent of the individual or the individual's authorized representative in an emergency. All emergency treatment or services and the facts and circumstances justifying the emergency shall be documented in the individual's services record within 24 hours of the treatment or services.

a. Providers shall immediately notify the authorized representative of the provision of treatment without consent during an emergency.

b. Providers shall continue emergency treatment without consent beyond 24 hours only following a review of the individual's condition and if a new order is issued by a professional who is authorized by law and the provider to order treatment.

c. Providers shall notify the human rights advocate if emergency treatment without consent continues beyond 24 hours.

d. Providers shall develop and integrate treatment strategies into the ISP to address and prevent future emergencies to the extent possible following provision of emergency treatment without consent.

6. Providers shall obtain and document in the individual's services record the consent of the individual or his authorized representative to continue any treatment initiated in an emergency that lasts longer than 24 hours after the emergency began.

7. Providers may provide treatment in accordance with a court order or in accordance with other provisions of law that authorize such treatment or services including § 54.1-2970 of the Code of Virginia and the Health Care Decisions Act (§ 54.1-2981 et seq. of the Code of Virginia). The provisions of these regulations are not intended to be exclusive of other provisions of law but are cumulative ~~(§ 54.1-2970 of the Code of Virginia)~~.

8. Providers shall respond to an individual's request for discharge set forth in statute and shall make sure that the individual is not subject to punishment, reprisal, or reduction in services because he makes a request. However, if an individual leaves a service against medical advice, any subsequent billing of the individual by his private third party payer shall not constitute punishment or reprisal on the part of the provider.

a. Voluntary admissions.

(1) Individuals admitted under § 37.2-805 of the Code of Virginia to state hospitals operated by the department who notify the director of their intent to leave shall be discharged when appropriate, but no later than eight hours after notification, unless another provision of law authorizes the director to retain the individual for a longer period.

(2) Minors admitted under § 16.1-338 or 16.1-339 of the Code of Virginia shall be released to the parent's or legal guardian's custody within 48 hours of the consenting parent's or legal guardian's notification of withdrawal of consent, unless a petition for continued hospitalization pursuant to § ~~16.1-340~~ 16.1-340.1 or ~~16.1-345~~ 16.1-341 of the Code of Virginia is filed.

b. Involuntary admissions.

(1) When a minor involuntarily admitted under § 16.1-345 of the Code of Virginia no longer meets the commitment criteria, the director shall take appropriate steps to arrange the minor's discharge.

(2) When an individual involuntarily admitted under § 37.2-817 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary admission. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and the reasons for denial shall be included in the individual's services record. Anytime the individual meets any of the criteria for discharge set out in § 37.2-837 or 37.2-838 of the Code

of Virginia, the director shall take all necessary steps to arrange the individual's discharge.

(3) If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§ ~~19.2-67~~ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia no longer meets the criteria under which the individual was admitted and retained, the director or commissioner, as appropriate, shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to § 19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquittee no longer needs hospitalization.

c. Certified admissions. If an individual certified for admission to a state training center or his authorized representative requests discharge, the director or his designee shall contact the individual's community services board to finalize and implement the discharge plan.

12VAC35-115-80. Confidentiality.

A. Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. Each individual has a right to give his authorization before the provider shares identifying information about him or his care unless another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider's duties.

1. Providers shall maintain the confidentiality of any information that identifies an individual. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance use disorders, providers shall disclose information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall obtain and document in the individual's services record the individual's authorization or that of the authorized representative prior to disclosing any identifying information about him. The authorization must contain the following elements:

a. The name of the organization and the name or other specific identification of the person or persons or class of persons to whom disclosure is made;

b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the authorization extends to the information placed in the individual's record after the authorization was given but before it expires;

c. An indication of the effective date of the authorization and the date the authorization will expire, or the event or condition upon which it will expire; and

d. The signature of the individual and the date. If the authorization is signed by an authorized representative, a description of the authorized representative's authority to act.

3. Providers shall tell each individual and his authorized representative about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his authorization. If a disclosure is not required by law, the provider shall give strong consideration to any objections from the individual or his authorized representative in making the decision to disclose information.

4. Providers shall prevent unauthorized disclosures of information from services records and shall maintain and disclose information in a secure manner.

5. In the case of a minor, the authorization of the custodial parent or other person authorized to consent to the minor's treatment under § 54.1-2969 is required, except as provided below:

a. Section 54.1-2969 E of the Code of Virginia permits a minor to authorize the disclosure of information related to medical or health services for a sexually transmitted or contagious disease, family planning or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.

b. The concurrent authorization of the minor and custodial parent is required to disclose inpatient substance abuse records.

c. The minor and the custodial parent shall authorize the disclosure of identifying information related to the minor's inpatient psychiatric hospitalization when the minor is 14 years of age or older and has consented to the admission.

6. When providers disclose identifying information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual authorizes the disclosure or unless state law or regulation allows or requires further disclosure without authorization.

7. Providers may encourage individuals to name family members, friends, and others who may be told of their presence in the program and general condition or well-being. Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly relevant to that persons involvement with the individual's care or payment for his health care, if (i) the provider obtains the individual's agreement, (ii) the provider provides the individual with the opportunity to object to the disclosure, and (iii) the individual does not object or the provider reasonably infers for the circumstances, based or the

exercise of professional judgment, that the individual does not object to the disclosure. If the opportunity to agree or object cannot be provided because of the individual's incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual and, if so, disclose only the information that is directly relevant to the person's involvement with the individual's health care.

8. Providers may disclose the following identifying information without authorization or violation of the individual's confidentiality, but only under the conditions specified in the following subdivisions of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section.

a. Emergencies: Providers may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to or death of an individual or other person. The provider shall not disclose any information that is not needed for this specific purpose.

b. Providers or health plans: Providers may permit any full-time or part-time employee, consultant, agent, or contractor of the provider to use identifying information or disclose to another provider, a health plan, the department, or a CSB, information required to give services to the individual or to get payment for the services.

c. Court proceedings: If the individual or someone acting for him introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary admission or certification for admission is being proposed.

d. Legal counsel: Providers may disclose information to their own legal counsel or to anyone working on behalf of their legal counsel in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General or to anyone appointed by or working on behalf of that office in providing representation to the Commonwealth of Virginia.

e. Human rights committees: Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

f. Others authorized or required by the commissioner, CSB, or private program director: Providers may disclose information to other persons if authorized or required for the following activities:

(1) Licensing, human rights, or certification or accreditation reviews;

(2) Hearings, reviews, appeals, or investigations under these regulations;

(3) Evaluation of provider performance and individual outcomes (see §§ 37.2-508 and 37.2-608 of the Code of Virginia);

(4) Statistical reporting;

(5) Preauthorization, utilization reviews, financial and related administrative services reviews, and audits; or

(6) Similar oversight and review activities.

g. Preadmission screening, services, and discharge planning: Providers may disclose to the department, the CSB, or to other providers information necessary to screen individuals for admission or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.2-505 of the Code of Virginia).

h. Protection and advocacy agency: Providers may disclose information to the protection and advocacy agency in accordance with that agency's legal authority under federal and state law.

i. Historical research: Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

(1) The request for historical research shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its expected date of completion, a rationale explaining the need to access otherwise private information, and the specific identification of the type and location of the records sought.

(2) The commissioner, CSB executive director, or private program director has authorized the research;

(3) The individual or individuals who are the subject of the disclosure are deceased;

(4) There are no known living persons permitted by law to authorize the disclosure; and

(5) The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

j. Protection of public safety: If an individual receiving services makes a specific threat to cause serious bodily injury or death to an identified or readily identifiable person and the provider reasonably believes that the individual has the intent and the ability to carry out the threat immediately or imminently, the provider may disclose those facts necessary to alleviate the potential threat.

k. Inspector General: Providers may disclose to the Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) any individual services records and other information relevant to the provider's delivery of services.

l. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

m. Psychotherapy notes: Providers shall obtain an individual's authorization for any disclosure of psychotherapy notes, except when disclosure is made:

(1) For the provider's own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or improve their skills in group, joint, family or individual counseling;

(2) To defend the provider or its employees or staff against any accusation or wrongful conduct;

(3) In discharge of the provider's duty, in accordance with § 54.1-2400.1 B of the Code of Virginia, to take precautions to protect third parties from violent behavior or other serious harm;

(4) As required in the course of an investigation, audit, review, or proceeding regarding a provider's conduct by a duly authorized law enforcement, licensure, accreditation, or professional review entity; or

(5) When otherwise required by law.

n. A law-enforcement official:

(1) Pursuant to a search warrant or grand jury subpoena;

(2) In response to their request, for the purpose of identifying or locating a suspect, fugitive, an individual required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information is disclosed:

(a) Name and address of the individual;

(b) Date and place of birth of the individual;

(c) Social ~~Security~~ security number of the individual;

(d) Blood type of the individual;

(e) Date and time of treatment received by the individual;

(f) Date and time of death of the individual;

(g) Description of distinguishing physical characteristics of the individual; and

(h) Type of injury sustained by the individual.

(3) Regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct; or

(4) If the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises.

o. Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or law or regulation. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization.

9. Upon request, the provider shall tell the individual or his authorized representative the sources of information contained in his services records and provide a written listing of disclosures of information made without authorization, except for disclosures:

a. To employees of the department, CSB, the provider, or other providers;

b. To carry out treatment, payment, or health care operations;

c. That are incidental or unintentional disclosures that occur as a by-product of engaging in health care communications and practices that are already permitted or required;

d. To an individual or his authorized representative;

e. Pursuant to an authorization;

f. For national security or intelligence purposes;

g. To correctional institutions or law-enforcement officials; or

h. That were made more ~~that~~ than six years prior to the request.

10. The provider shall include the following information in the listing of disclosures of information provided to the individual or his authorized representative under subdivision 9 of this subsection:

a. The name of the person or organization that received the information and the address if known;

b. A brief description of the information disclosed; and

c. A brief statement of the purpose of the disclosure or, in lieu of such a statement, a copy of the written request for disclosure.

11. If the provider makes multiple disclosures of information to the same person or entity for a single purpose, the provider shall include the following:

a. The information required in subdivision 10 of this subsection for the first disclosure made during the requested period;

b. The frequency, periodicity, or number of disclosures made during the period for which the individual is requesting information; and

c. The date of the last disclosure during the time period.

12. If the provider makes a disclosure to a social service or protective services agency about an individual who the provider reasonably believes to be a victim of abuse or

neglect, the provider is not required to inform the individual or his authorized representative of the disclosure if:

a. The provider, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or

b. The provider would be informing the authorized representative, and the provider reasonably believes that the authorized representative is responsible for the abuse or neglect, and that informing such person would not be in the best interests of the individual.

12VAC35-115-110. Use of seclusion, restraint, and time out.

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, or time out.

B. The voluntary use of mechanical supports to achieve proper body position, balance, or alignment so as to allow greater freedom of movement or to improve normal body functioning in a way that would not be possible without the use of such a mechanical support, and the voluntary use of protective equipment are not considered restraints.

C. The provider's duties.

1. Providers shall meet with the individual or his authorized representative upon admission to the service to discuss and document in the individual's services record, his preferred interventions in the event his behaviors or symptoms become a danger to himself or others and under what circumstances, if any, the intervention may include seclusion, restraint, or time out.

2. Providers shall document in the individual's services record all known contraindications to the use of seclusion, time out, or any form of physical or mechanical restraint, including medical contraindications and a history of trauma and shall flag the record to alert and communicate this information to staff.

3. Only residential facilities for children that are licensed under the Regulations for ~~Providers of Mental Health, Mental Retardation, and Substance Abuse Residential Services for Children (12VAC35-45)~~ Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

4. Providers shall not use seclusion, restraint, or time out as a punishment or reprisal or for the convenience of staff.

5. Providers shall not use seclusion or restraint solely because criminal charges are pending against the individual.

6. Providers shall not use seclusion or restraint for any behavioral, medical, or protective purpose unless other less restrictive techniques have been considered and documentation is placed in the individual's services plan that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency.

7. Providers that use seclusion, restraint, or time out shall develop written policies and procedures that comply with applicable federal and state laws and regulations, accreditation, and certification standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include at least the following requirements:

a. Individuals shall be given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and to bathe as needed.

b. Trained, qualified staff shall monitor the individual's medical and mental condition continuously while the restriction is being used.

c. Each use of seclusion, restraint, or time out shall end immediately when criteria for removal are met.

d. Incidents of seclusion and restraint, including the rationale for and the type and duration of the restraint, are reported to the department as provided in 12VAC35-115-230 C.

8. Providers shall submit all proposed seclusion, restraint, and time out policies and procedures to the LHRC for review and comment before implementing them, when proposing changes, or upon request of the human rights advocate, the LHRC, or the SHRC.

9. Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint.

a. Whenever an inconsistency exists between these regulations and federal laws or regulations, accreditation or certification standards, or the requirements of third party payers, the provider shall comply with the higher standard.

b. Providers shall notify the department whenever a regulatory, accreditation, or certification agency or third party payer identifies problems in the provider's compliance with any applicable seclusion and restraint standard.

10. Providers shall ensure that only staff who have been trained in the proper and safe use of seclusion, restraint, and time out techniques may initiate, monitor, and discontinue their use.

11. Providers shall ensure that a qualified professional who is involved in providing services to the individual reviews every use of physical restraint as soon as possible after it is carried out and document the results of his review in the individual's services record.

12. Providers shall ensure that review and approval by a qualified professional for the use or continuation of

restraint for medical or protective purposes is documented in the individual's services record. Documentation includes:

a. Justification for any restraint;

b. Time-limited approval for the use or continuation of restraint; and

c. Any physical or psychological conditions that would place the individual at greater risk during restraint.

13. Providers may use seclusion or mechanical restraint for behavioral purposes in an emergency only if a qualified professional involved in providing services to the individual has, within one hour of the initiation of the procedure:

a. Conducted a face-to-face assessment of the individual placed in seclusion or mechanical restraint and documented that alternatives to the proposed use of seclusion or mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;

b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;

c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;

d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and

e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's right to a fair review of whether the mechanical restraint or seclusion was permissible.

14. Providers shall limit each approval for restraint for behavioral purposes or seclusion to four hours for individuals age 18 and older, two hours for children and adolescents ages ~~9~~ nine through 17, and one hour for children under age nine.

15. Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes.

16. Providers shall ensure that no individual is in time out for more than 30 minutes per episode.

17. Providers shall monitor the use of restraint for behavioral purposes or seclusion through continuous face-to-face observation, rather than by an electronic surveillance device.

18. Providers may use restraint or time out in a behavioral treatment plan to address behaviors that present an immediate danger to the individual or others, but only after a qualified professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.

a. Providers shall develop any behavioral treatment plan involving the use of restraint or time out for behavioral purposes according to its policies and procedures, which ensure that:

(1) Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so.

(2) Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior.

(3) Behavioral treatment plans are submitted to and approved by an independent review committee comprised of professionals with training and experience in applied behavior analysis who have assessed the technical adequacy of the plan and data collection procedures.

b. Providers shall document in the individual's services record that the lack of success, or probable success, of less restrictive procedures attempted and the risks associated with not treating the behavior are greater than any risks associated with the use of restraint.

c. Prior to the implementation of any behavioral treatment plan involving the use of restraint or time out, the provider shall obtain approval of the LHRC. If the LHRC finds that the plan violates or has the potential to violate the rights of the individual, the LHRC shall notify and make recommendations to the director.

d. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and by the LHRC to determine if the use of restraint has resulted in improvements in functioning of the individual.

19. Providers may not use seclusion in a behavioral treatment plan.

12VAC35-115-146. Authorized representatives.

A. When it is determined in accordance with 12VAC35-115-145 that an individual lacks the capacity to consent or authorize the disclosure of information, the provider shall recognize and obtain consent or authorization for those decisions for which the individual lacks capacity from the following if available:

1. An attorney-in-fact who is currently empowered to consent or authorize the disclosure under the terms of a durable power of attorney;

2. A health care agent appointed by the individual under an advance directive or power of attorney in accordance with the laws of Virginia; or

3. A legal guardian of the individual, or if the individual is a minor, a parent with legal custody of the minor or other

person authorized to consent to treatment pursuant to § 54.1-2969 A of the Code of Virginia.

B. If an attorney-in-fact, health care agent or legal guardian is not available, the director shall designate a substitute decision maker as authorized representative in the following order of priority:

1. The individual's family member. In designating a family member, the director shall honor the individual's preference unless doing so is clinically contraindicated.

a. If the director does not appoint the family member chosen by the individual, the individual shall be told of the reasons for the decision and information about how to request LHRC review according to 12VAC35-115-200.

b. If the individual does not have a preference or if the director does not honor the individual's preference in accordance with these regulations, the director shall select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified.

(1) A spouse;

(2) An adult child;

(3) A parent;

(4) An adult brother or sister; or

(5) Any other relative of the individual.

2. Next friend of the individual. If no other person specified above is available and willing to serve as authorized representative, a provider may designate a next friend of the individual, after a review and finding by the LHRC that the proposed next friend has, for a period of six months within two years prior to the designation either:

a. Shared a residence with the individual; or

b. Had regular contact or communication with the individual and provided significant emotional, personal, financial, spiritual, psychological, or other support and assistance to the individual.

3. In addition to the conditions set forth in subdivision 2 of this subsection, the individual must have no objection to the proposed next friend being designated as the authorized representative.

4. The person designated as next friend also shall:

a. Personally appear before the LHRC, unless the LHRC has waived the personal appearance; and

b. Agree to accept these responsibilities and act in the individual's best interest and in accordance with the individual's preferences, if known.

5. The LHRC shall have the discretion to waive a personal appearance by the proposed next friend and to allow that person to appear before it by telephone, video, or other electronic means of communication as the LHRC may deem appropriate under the circumstances. Waiving the personal appearance of the proposed next friend should be done in very limited circumstances.

6. If, after designation of a next friend, an appropriate family member becomes available to serve as authorized representative, the director shall replace the next friend with the family member.

C. No director, employee, or agent of a provider may serve as an authorized representative for any individual receiving services delivered by that provider unless the authorized representative is a relative or the legal guardian When a provider, or the director, an employee, or agent of the provider is also the individual's guardian, the provider shall assure that the individual's preferences are included in the services plan and that the individual can make complaints about any aspect of the services he receives.

D. The provider shall document the recognition or designation of an authorized representative in the individual's services record, including evidence of consultation with the individual about his preference, copies of applicable legal documents such as the durable power of attorney, advance directive, or guardianship order, names and contact information for family members, and, when there is more than one potential family member available for designation as authorized representative, the rationale for the designation of the particular family member as the authorized representative.

E. If a provider documents that the individual lacks capacity to consent and no person is available or willing to act as an authorized representative, the provider shall:

1. Attempt to identify a suitable person who would be willing to serve as guardian and ask the court to appoint that person to provide consent or authorization; or

2. Ask a court to authorize treatment (See § 37.2-1101 of the Code of Virginia).

F. Court orders authorizing treatment shall not be viewed as substituting or eliminating the need for an authorized representative.

1. Providers shall review the need for court-ordered treatment and determine the availability of and seek an authorized representative whenever the individual's condition warrants, the individual requests such a review, or at least every six months except for individuals receiving acute inpatient treatment.

2. Providers of acute inpatient services shall review the need for court-ordered treatment and determine the availability of and seek an authorized representative whenever the individual's condition warrants or at least at every treatment team meeting. All such reviews shall be documented in the individual's services record and communicated to the individual.

3. When the provider recognizes or designates an authorized representative, the provider shall notify the court that its order is no longer needed and shall immediately suspend its use of the court order.

G. Conditions for removal of an authorized representative. Whenever an individual has regained capacity to consent as indicated by a capacity evaluation or clinical determination, the director shall immediately remove any authorized representative designated pursuant to subdivision B 1 or 2 of this section, notify the individual and the authorized representative, and ensure that the services record reflects that the individual is capable of making his own decisions. Whenever an individual with an authorized representative who is his legal guardian has regained his capacity to give informed consent, the director may use the applicable statutory provisions to remove the authorized representative. (See § ~~37.2-1012~~ 64.2-2012 of the Code of Virginia.) If powers of attorney and health care agents' powers do not cease of their own accord when a clinician has determined that the individual is no longer incapacitated, the director shall seek the consent of the individual and remove the person as authorized representative.

1. The director shall remove the authorized representative designated pursuant to subdivision B 1 or 2 of this section if the authorized representative becomes unavailable, unwilling, or unqualified to serve. The individual or the advocate may request the LHRC to review the director's decision to remove an authorized representative under the procedures set out at 12VAC35-115-180, and the LHRC may reinstate the authorized representative if it determines that the director's action was unjustified.

2. Prior to any removal under this authority, the director shall notify the individual of the decision to remove the authorized representative, of his right to request that the LHRC review the decision, and of the reasons for the removal decision. This information shall be placed in the individual's services record. If the individual requests, the director shall provide him with a written statement of the facts and circumstances upon which the director relied in deciding to remove the authorized representative.

The LHRC may recommend the removal of a next friend pursuant to 12VAC35-115-200 when the next friend is not acting in accordance with the individual's best interest.

3. The director may otherwise seek to replace an authorized representative recognized pursuant to this section who is an attorney-in-fact currently authorized to consent under the terms of a durable power of attorney, a health care agent appointed by an individual under an advance directive, a legal guardian of the individual, or, if the individual is a minor, a parent with legal custody of the individual, only by a court order under applicable statutory authority.

12VAC35-115-210. State Human Rights Committee appeals procedures.

A. Any party may appeal to the SHRC if he is not satisfied with any of the following:

1. An LHRC's final findings of fact and recommendations following a hearing;

2. A director's final action plan following an LHRC hearing;

3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, services, or research or authorize disclosure of information; or

4. An LHRC's final decision concerning whether consent or authorization is needed for the director to take a certain action.

The steps for filing an appeal are provided in subsections B through I of this section.

B. Step 1: Appeals shall be filed in writing with the SHRC by a party within 10 working days of receipt of the final action.

1. The appeal shall explain the reasons the final action is not satisfactory.

2. The human rights advocate or any other person may help in filing the appeal. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's help in filing the appeal.

3. The party appealing must give a copy of the appeal to the other party, the human rights advocate, and the LHRC.

4. If the director is the party appealing, he shall first request and get written permission to appeal from the commissioner or governing body of the provider, as appropriate. If the director does not get this written permission and note the appeal within 10 working days, his right to appeal is waived.

C. Step 2: If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the SHRC within five working days after receiving a copy of the appeal.

D. Step 3: Within five working days of noting or being notified of an appeal, the director shall forward a complete record of the LHRC hearing to the SHRC. The record shall include, at a minimum:

1. The original petition or information filed with the LHRC and any statement filed by the director in response;

2. Parts of the individual's services record that the LHRC considered and any other parts of the services record submitted to, but not considered by the LHRC that either party considers relevant;

3. All written documents and materials presented to and considered by the LHRC, including any independent evaluations conducted;

4. A tape or transcript of the LHRC proceedings, if available;

5. The LHRC's findings of fact and recommendations;

6. The director's action plan, if any; and

7. Any written objections to the action plan or its implementation.

E. Step 4: The SHRC shall hear the appeal at its next scheduled meeting after the chairperson receives the appeal.

1. The SHRC shall give the parties at least 10 working days' notice of the appeal hearing.

2. The following rules govern appeal hearings:

a. The SHRC shall not hear any new evidence.

b. The SHRC is bound by the LHRC's findings of fact subject to subdivision 3 of this subsection.

c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of these regulations and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.

d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their positions and answer questions the SHRC may have.

e. The SHRC shall notify the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) of the appeal.

3. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may:

a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or

b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 working days of the SHRC's initial hearing.

In either case, the parties shall have 15 working days' notice of the date of the hearing and the opportunity to be heard and to present witnesses and other evidence.

F. Step 5: Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a report, its findings of fact, if applicable, and recommendations to the commissioner and to the provider's governing body, with copies to the parties, the LHRC, and the human rights advocate.

G. Step 6: Within 10 working days after receiving the SHRC's report, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSBs and private providers, the commissioner and the provider's governing body shall each outline in writing the action or actions they will take in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the human rights advocate, and the individual.

H. Step 7: If the SHRC objects in writing to the commissioner's or governing body's proposed actions, or both, their actions shall be postponed. The commissioner or governing body, or both, shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.

I. Step 8: In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the commissioner's action plan is incompatible with the purpose of these regulations, it shall notify the board, the protection and advocacy agency, and the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia).

In the case of services delivered by all other providers, the action plan of the provider's governing body shall be reviewed by the commissioner. If the commissioner determines that the provider has failed to develop and carry out an acceptable action plan, the commissioner shall notify the protection and advocacy agency and shall inform the SHRC of the sanctions the department will impose against the provider.

J. Step 9: Upon completion of the process outlined in subsections B through I of this section, the SHRC shall notify the parties and the human rights advocate of the final outcome of the complaint.

Part VI
Variances

12VAC35-115-220. Variances.

A. Variances to these regulations shall be requested and approved only when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individuals.

B. Only directors may apply for variances, and they must first be approved by the provider, the governing body of the provider, or the commissioner, as appropriate, before consideration by an LHRC or the SHRC.

C. Upon receiving approval from the governing body or commissioner, and after notifying the human rights advocate and other interested persons, the director shall file a formal application for variance with the LHRC. This application shall reference the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. The application shall also describe time limits and other conditions for duration and the circumstances that will end the applicability of the variance.

1. When the LHRC receives the application, it shall invite, and provide ample time to receive, oral or written

statements about the application from the human rights advocate, individuals affected by the variance, and other interested persons.

2. The LHRC shall review the application and prepare a written report of facts, which shall include its recommendation for approval, disapproval, or modification. The LHRC shall send its report, recommendations, and a copy of the original application to the State Human Rights Director, the SHRC, and the director making application for the variance.

D. When the SHRC receives the application and the LHRC's report, the SHRC shall do the following:

1. Invite oral or written statements about the application from the applicant director, LHRC, advocate, and other interested persons by publishing the request for variance in the next issue of the Virginia Register of Regulations;

2. Notify the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) of the request for variance; and

3. After considering all available information, prepare a written decision deferring, disapproving, modifying, or approving the application. All variances shall be approved for a specific time period and must be reviewed at least annually.

a. A copy of this decision including conditions, time frames, circumstances for removal, and the reasons for the decision shall be given to the applicant director, the commissioner or governing body, the state human rights director, the human rights advocate, any person commenting on the request at any stage, and the LHRC.

b. The decision and reasons shall also be published in the next issue of the Virginia Register of Regulations.

E. Directors shall implement any approved variance in strict compliance with the written application as amended, modified, or approved by the SHRC.

F. Providers shall develop policies and procedures for monitoring the implementation of any approved variances. These policies and procedures shall specify that at no time can a variance approved for one individual be extended to general applicability. These policies and procedures shall assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the commissioner, the state human rights director, the human rights advocate, the LHRC or the SHRC.

G. The decision of the SHRC granting or denying a variance shall be final.

H. Following the granting of a variance, the provider shall notify all individuals affected by the variance about the details of the variance.

I. If an individual is in immediate danger due to a provider's implementation of these regulations, the provider may request a temporary variance pending approval pursuant to the process described in this section. Such a request shall be submitted in writing to the commissioner, chairperson of the SHRC, and state human rights director. The commissioner, chairperson of the SHRC, and state human rights director shall issue a decision within 48 hours of the receipt of such a request.

Part VII
Reporting Requirements

12VAC35-115-230. Provider requirements for reporting to the department.

A. Providers shall collect, maintain and report the following information concerning abuse, neglect, and exploitation:

1. The director of a facility operated by the department shall report allegations of abuse and neglect in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall report each allegation of abuse or neglect to the assigned human rights advocate within 24 hours from the receipt of the allegation (see 12VAC35-115-50).

3. The investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate within 10 working days from the date the investigation began unless an exemption has been granted by the department (see 12VAC35-115-50). This report shall include:

a. Whether abuse, neglect, or exploitation occurred;

b. The type of abuse; and

c. Whether the act resulted in physical or psychological injury.

B. Providers shall collect, maintain, and report the following information concerning deaths and serious injuries:

1. The director of a facility operated by the department shall report to the department deaths and serious injuries in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall report deaths and serious injuries in writing to the department within 24 hours of discovery and by telephone to the authorized representative within 24 hours.

3. All reports of death and serious injuries shall include:

a. Date and place of the death or serious injury;

b. Nature of the injuries and treatment required; and

c. Circumstances of the death or serious injury.

C. Providers shall collect, maintain and report the following information concerning seclusion and restraint:

1. The director of a facility operated by the department shall report each instance of seclusion or restraint or both

in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall submit an annual report of each instance of seclusion or restraint or both by the 15th of January each year, or more frequently if requested by the department.

3. Each instance of seclusion or restraint or both shall be compiled on a monthly basis and the report shall include:

a. Type(s) to include:

(1) Physical restraint (manual hold);

(2) Mechanical restraint;

(3) Pharmacological restraint; and

(4) Seclusion.

b. Rationale for the use of seclusion or restraint to include:

(1) Behavioral purpose;

(2) Medical purpose; or

(3) Protective purpose.

c. Duration of the seclusion or restraint, as follows:

(1) The duration of seclusion and restraint used for behavioral purposes is defined as the actual time the individual is in seclusion or restraint from the time of initiation of seclusion or restraint until the individual is released.

(2) The duration of restraint for medical and protective purposes is defined as the length of the episode as indicated in the order.

4. Any instance of seclusion or restraint that does not comply with these regulations or approved variances, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and the assigned human rights advocate within 24 hours.

D. The director shall provide to the human rights advocate and the LHRC information on the type, resolution level, and findings of each complaint of a human rights violation and implementation of variances in accordance with the LHRC meeting schedule or as requested by the advocate.

E. Reports required under this section shall be submitted to the department on forms or in an automated format or both developed by the department.

F. The department shall compile all data reported under this section and make this data available to the public and the ~~inspector general~~ Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) upon request.

1. The department shall provide the compiled data in writing or by electronic means.

2. The department shall remove all provider-identifying information and all information that could be used to identify a person as an individual receiving services.

G. In the reporting, compiling and releasing of information and statistical data provided under this section, the department and all providers shall take all measures necessary to ensure that any information identifying individuals is not released to the public, including encryption of data transferred by electronic means.

H. Nothing in this section is to be construed as requiring the reporting of proceedings, minutes, records, or reports of any committee or nonprofit entity providing a centralized credentialing service, which are identified as privileged pursuant to § 8.01-581.17 of the Code of Virginia.

I. Providers shall report to the Department of Health Professions, Enforcement Division, violations of these regulations that constitute reportable conditions under §§ 54.1-2400.4, 54.1-2400.6, and 54.1-2909~~, and 54.1-2900.6~~ of the Code of Virginia.

VA.R. Doc. No. R15-4098; Filed August 18, 2014, 11:16 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 (§ 2.2-4000 et seq. of the Code of Virginia) 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 13VAC10-180-10, 13VAC10-180-50, 13VAC10-180-60).**

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

Public Hearing Information:

September 18, 2014 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220

Public Comment Deadline: September 18, 2014.

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) replace the definition of "revitalization area" with the definition of such term contained in the Virginia Housing Development Authority Act; (ii) reduce the points awarded to developments located in revitalization areas; (iii) remove the point category for developments located in a qualified census tract, which is unnecessary as these developments automatically meet the revised definition of revitalization

area; (iv) provide that maximum cost limits for developments do not include costs of installing electrical and plumbing hook-ups for dehumidification systems up to a maximum for such costs; (v) reduce the percentage of units required to be set aside at more restrictive rent or income limits to receive maximum points for imposing more restrictive limits; (vi) add a point category for developments applying for both 4.0% and 9.0% credits; (vii) reduce the minimum percentage of disability units for developments competing in the noncompetitive disability pool and for developments receiving federal Housing and Urban Development Section 811 funding; (viii) add an additional point category for certain developments giving first preference to persons with intellectual or developmental disabilities; (ix) increase points for proximity to certain forms of public transportation for the Tidewater Metropolitan Statistical Area pool; (x) effective January 1, 2016, eliminate the point category for evidence of proper zoning and make such documentation a mandatory item; (xi) allow points for donated land or below market rate land leases in the subsidized funding point category; and (xii) make other miscellaneous administrative clarification changes.

13VAC10-180-10. Definitions.

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

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act (42 USC § 3601 et seq.).

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units ~~which~~ that are defined as "low income units" under § 42 of the IRC.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development (~~"~~HUD~~"~~).

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multifamily rental project has owned or participated in the ownership of such project, all as more fully described hereinbelow. The person who is the owner of the proposed development or multifamily rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits ~~which~~ that is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development ~~which~~ that meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits thereunder.

~~"Revitalization area" means any area for which the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located certifies as follows: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions: dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or inadequate design, quality or condition or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not~~

~~reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia shall be deemed a revitalization area without any such certification. Any such revitalization area must either (i) include discussions from the locality of the type of developments that will be encouraged, the potential sources of funding, and services to be offered in the area; or (ii) be subject to a plan using Hope VI funds from HUD. A comprehensive plan does not qualify as certification of a revitalization area.~~

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, Loudoun County, and Fauquier County. The total development cost of proposed developments in Prince William County, Loudoun County, and Fauquier County may not exceed (i) for new construction or adaptive reuse: $249,210 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: $143,775 per unit.

Costs, subject to a per unit limit set by the executive director, attributable to equipping units with electrical and plumbing hook-ups for dehumidification systems will not be included in the calculation of the above per unit cost limits.

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.

Effective January 1, 2016, each application shall include 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.

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~~ that apply (or ~~which~~ that 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~~ that 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~~ that 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~~ that, 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~~ For applications submitted prior to January 1, 2016, 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. 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. 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.~~ c. Any proposed development that is to be located in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia. (10 points)

d. 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.~~ e. 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 and donations from unrelated private foundations that have filed an IRS Form 990 (or a variation of such form) or Rural Development for a below-market rate loan or grant; (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 tap fee waivers from the local government~~.~~; or (iv) a commitment to donate land (including a below market rate land lease) from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option, with no ownership interest in the applicant, shall not make the donor a principal in the applicant). (The amount of such financing ~~or~~, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and 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.~~ f. 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.~~ g. 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 five units or 10% of the units of the proposed development. (10 points)

~~i.~~ h. 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.~~ i. 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)

~~k.~~ j. 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)

~~l.~~ k. 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.)

~~m.~~ l. 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) 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. (10 points) and

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

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

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

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

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

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

(i) If all the water heaters 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 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) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

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

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

(m) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's 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 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)

b. Any development in which (i) the greater of five units or 10% of the units will be assisted by HUD project-based vouchers (as evidenced by the submission of a letter satisfactory to the authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance)~~,~~ 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 five 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 persons with 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 front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

In addition, subject to HUD granting the authority approval for the following prior to the effective date of the plan, any development eligible for the preceding 50 points having a marketing plan submitted as part of the application for credits containing a first preference on the waiting list for persons with an intellectual or developmental disability (ID/DD) as confirmed by the Virginia Department of Medical Assistance Services (DMAS) or Virginia Department of Behavioral Health and Developmental Services (DBHDS) for the greater of five units or 10% of the units. (10 points)

c. Any development in which the greater of five 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 ~~(ii)~~ (iii) are actively marketed to persons with 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 development in which 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 persons with 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 or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA 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) U.S. 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 EarthCraft certified development; 30 points for a LEED Gold development or EarthCraft Gold development; 45 points for a LEED Platinum development 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.)

i. Any development in which the applicant will also make an application for credits based upon financing by tax-exempt bonds for a development located on the same or contiguous site. (30 points)

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~~ controlling general partner or managing member of the controlling general partner or managing member for the proposed development have developed:

(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. (50 points) or

(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) and 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)

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)

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)

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).

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 by 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 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. (Up to 50 points, the product of (i) ~~62.5~~ 100 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~~ one point for each percentage point of such housing units in the proposed development ~~which~~ that 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. (Up to 25 points, the product of (i) ~~31.25~~ 50 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~~ one point for each percentage point of such housing units in the proposed development ~~which~~ that 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~~ five 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 425 points (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~~ that he determines is not submitted in good faith or ~~which~~ that 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 40% 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 (§ 63.2-1700 et seq.) 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~~ canceled, 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~~ that 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~~ that 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~~ that 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~~ will be assisted by HUD project-based vouchers or another form of documented and binding federal project-based rent subsidies 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%~~ 25% 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%~~ 10% 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. R15-4144; Filed August 19, 2014, 4:35 p.m.

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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.

Title of Regulation: **14VAC5-234. Rules Governing Essential and Standard Health Benefit Plan Contracts (repealing 14VAC5-234-10 through 14VAC5-234-100).**

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

Effective Date: September 1, 2014.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152 or email bob.grissom@scc.virginia.gov.

Summary:

In 1992, the Essential Health Services Panel established a requirement to offer all small employers essential and standard health benefit plans that covered various minimum health benefits. 14VAC5-234 was promulgated as a result of this requirement, and its repeal is necessary because the plan requirements for essential and standard health benefit plan contracts have been preempted by the provisions of the Affordable Care Act (P.L. 111-148, as amended), which require health plans offered in the individual and small group markets to provide a comprehensive set of benefits referred to as "essential health benefits." These essential health benefits are codified at § 38.2-3451 of the Code of Virginia. In addition, the 2013 General Assembly deleted references to the requirement for essential and standard health benefit plans contained in § 38.2-3431 of the Code of Virginia.

AT RICHMOND, AUGUST 25, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00117

Ex Parte: In the matter of Repealing the
Rules Governing Essential and Standard
Health Benefit Plan Contracts

ORDER REPEALING RULES

By Order to Take Notice ("Order") entered June 4, 2014, all interested persons were ordered to take notice that subsequent to August 1, 2014, the State Corporation Commission ("Commission") would consider the entry of an order repealing the rules entitled Rules Governing Essential and Standard Health Benefit Plan Contracts, 14 VAC 5-234-10 et seq. ("Rules"), as proposed by the Bureau of Insurance ("Bureau"), which repeal the Rules at 14 VAC 5-234-10 through 14 VAC 5-234-100.

The Order required that on or before August 1, 2014, any person objecting to the repeal of the Rules file a request for a 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 repeal of the Rules on or before August 1, 2014. No comments on the proposed repeal of the Rules were filed with the Clerk.

The repeal of Chapter 234 is necessary because the plan requirements for essential and standard health benefit plan contracts have been preempted by the provisions of the Affordable Care Act (P.L. 111-148, as amended), which require health plans offered in the individual and small group markets to provide a comprehensive set of benefits referred to as "essential health benefits." These essential health benefits are codified at § 38.2-3451 of the Code of Virginia ("Code"). In addition, the 2013 General Assembly deleted references to the requirement for essential and standard health benefit plans contained in § 38.2-3431 of the Code.

NOW THE COMMISSION, having considered the recommendation of the Bureau to repeal Chapter 234 of Title 14 of the Virginia Administrative Code, is of the opinion that the Rules should be repealed.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Essential and Standard Health Benefit Plan Contracts at 14 VAC 5-234-10 through 14 VAC 5-234-100, which are attached hereto and made a part hereof should be, and are hereby, REPEALED to be effective September 1, 2014.

(2) AN ATTESTED COPY hereof, together with a copy of the repealed Rules, shall be sent by the Clerk to the Bureau in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the repeal of the Rules by mailing a copy of this Order, together with a notice of the repealed rules, to all insurers, health services plans, fraternal benefit societies, and health maintenance organizations licensed to issue policies of accident and sickness insurance, subscription contracts, or evidences of coverage in the Commonwealth of Virginia ("Commonwealth"); and every multiple employer welfare arrangement operating in this Commonwealth and subject to the jurisdiction of the Commission, as well as to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached repealed Rules, 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 repealed Rules on the Commission's website: http://www.scc.virginia.gov/case.

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

VA.R. Doc. No. R14-3838; Filed August 25, 2014, 5:46 p.m.

TITLE 16. LABOR AND EMPLOYMENT

APPRENTICESHIP COUNCIL

Final Regulation

REGISTRAR'S NOTICE: The Apprenticeship Council is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia for the changes to the regulation that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. For the changes to the regulation that are necessary to meet the requirements of federal law or regulation, this regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Apprenticeship Council will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC20-20. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia (repealing 16VAC20-20-10 through 16VAC20-20-110).**

16VAC20-21. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia (adding 16VAC20-21-10 through 16VAC20-21-120).

Statutory Authority: § 40.1-118 of the Code of Virginia.

Effective Date: October 8, 2014.

Agency Contact: Beverley G. Donati, Program Director, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 225-4362, FAX (804) 786-8418, TTY (804) 786-2376, or email bev.donati@doli.virginia.gov.

Summary:

Chapter 734 of the 2014 Acts of Assembly amends Virginia law to conform the provisions of Virginia's Voluntary Apprenticeship Program to the mandated requirements of revised federal apprenticeship standards and to ensure that the Department of Labor and Industry continues to be recognized as a State Apprenticeship Agency. To conform to state law and federal regulation, the department is repealing 16VAC20-20 and promulgating 16VAC20-21. Changes include (i) transferring powers currently exercised by the Apprenticeship Council to the Commissioner of Labor and Industry, (ii) amending references to the Apprenticeship Council to refer to the Commissioner of Labor and Industry, and (iii) removing the exemption for apprentices from the Virginia Minimum Wage Act.

CHAPTER 21
REGULATIONS GOVERNING THE ADMINISTRATION OF APPRENTICESHIP PROGRAMS IN THE COMMONWEALTH OF VIRGINIA

16VAC20-21-10. Purpose.

This chapter establishes procedures and standards for the approval and registration of apprenticeship programs and agreements in accordance with Chapter 6 (§ 40.1-117 et seq.) of Title 40.1 of the Code of Virginia and includes the cancellation and deregistration of apprenticeship programs and apprenticeship agreements, the recognition of the Department of Labor and Industry as the authorized agency for registering apprenticeship programs for certain federal purposes, and other matters relating thereto. It is intended to

(i) ensure that all apprenticeship training programs registered with the Department of Labor and Industry are of the highest possible quality in all aspects of on-the-job learning and related instruction, (ii) safeguard the welfare of apprentices, (iii) and provide meaningful employment and relevant training for all apprentices.

16VAC20-21-20. Definitions.

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

"Administrator" means the Administrator, Office of Apprenticeship, United States Department of Labor.

"Apprentice" means a person as defined by § 40.1-120 of the Code of Virginia. All registered individuals are considered apprentices by the department until such time as they have either satisfactorily completed the apprenticeship program or have been canceled by the sponsor from the apprenticeship program.

"Apprenticeship agreement" means a written agreement between an apprentice and a program sponsor that meets the criteria as detailed in § 40.1-121 of the Code of Virginia and 16VAC20-21-50.

"Apprenticeship committee" or "committee" means those persons designated by the sponsor to administer the program. A committee may be either joint or nonjoint as follows:

1. A joint committee is composed of an equal number of representatives of the employer or employers and of the employees represented by a bona fide collective bargaining agent or agents.

2. A nonjoint committee, which may also be known as a unilateral or group nonjoint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

"Apprenticeable occupation" means an occupation as defined by § 40.1-120 of the Code of Virginia.

"Cancellation" means the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

"Certificate" or "certification" means documentary evidence that the department has (i) established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program, (ii) determined that an apprentice has successfully met the requirements to receive an interim credential, or (iii) determined that an individual has successfully completed the apprenticeship.

"Certificate of registration" means the master agreement or other written indicia of an apprenticeship program registered by the department.

"CFR" means the Code of Federal Regulations.

"Commissioner" means the Commissioner of the Virginia Department of Labor and Industry as defined by § 40.1-2 of the Code of Virginia.

"Competency" means the attainment of manual, mechanical, or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

"Completion rate" means the percentage of an apprenticeship cohort who received a certificate of apprenticeship completion within one year of the projected completion date. An apprentice cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been canceled during the probation period.

"Construction job site" means new or renovation with an approved building permit, plan of development, contract number, or contractual agreement.

"Coordinator of apprenticeship" means the person designated by the sponsor to perform the duties outlined in the standards of apprenticeship.

"Council" means the Virginia Apprenticeship Council established pursuant to § 40.1-117 of the Code of Virginia.

"Department" means the Virginia Department of Labor and Industry, which shall be the registration agency for federal purposes responsible for (i) registering voluntary programs and apprentices in and for the Commonwealth, (ii) providing technical assistance to such programs and individuals, and (iii) conducting both reviews for compliance with Chapter 6 (§ 40.1-117 et seq.) of Title 40.1 of the Code of Virginia and 29 CFR Parts 29 and 30, as well as quality assurance assessments.

"Electronic media" means media that utilize electronics or electromechanical energy for the end user (i.e., audience) to access the content, and includes but is not limited to electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media or interactive distance learning.

"Employer" means an employer as defined by § 40.1-120 of the Code of Virginia.

"Federal purposes" includes (i) any federal contract, grant, agreement or arrangement dealing with apprenticeship and (ii) any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference, or right pertaining to apprenticeship.

"Interim credential" means a credential issued by the department, upon request of the appropriate sponsor, as certification of the competency attainment by an apprentice.

"Journeyworker" means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. Use of this term may also refer to

a mentor, technician, specialist, or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

"Nonconstruction job site" means the physical area within the walls where services are offered. This is the location that is identified on the license issued by the licensing board or the political locality.

"Program" means a written plan for apprenticeship conducted or sponsored by an employer, an association of employers, a joint apprenticeship committee, or an organization of employees that contains all terms and conditions for qualification, recruitment, selection, employment, and training of apprentices, as required under Chapter 6 (§ 40.1-117 et seq.) of Title 40.1 of the Code of Virginia and 29 CFR Parts 29 and 30, including but not limited to the requirement for a written apprenticeship agreement.

"Provisional registration" means the one-year initial provisional approval of newly registered programs that meets the required standards for program registration after which program approval may be made permanent, continued as provisional, or rescinded following a review by the department.

"Quality assurance assessment" means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program's performance, including but not limited to determining if (i) apprentices are receiving on-the-job learning in all phases of the apprenticeable occupation, scheduled wage increases consistent with the registered standards, and related instruction through appropriate curriculum and delivery systems and (ii) the department is receiving notification of all new registrations, cancellations, and completions as required in this chapter.

"Registration agency" means the department that is the recognized state apprenticeship agency that has responsibility for registering apprenticeship programs and apprentices, providing technical assistance, and conducting reviews for compliance with 29 CFR Parts 29 and 30 and quality assurance assessments.

"Registration of an apprenticeship agreement" means the acceptance and recording of an apprenticeship agreement by the department as evidence of the apprentice's participation in a particular registered program.

"Registration of an apprenticeship program" means the acceptance, recordation, or approval by the department as meeting the basic standards and requirements for approval of such program for federal purposes. Approval is evidenced by a certificate of registration or other written indicia.

"Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the Apprenticeship Council with the input of the department and the Virginia Community College System.

"Sponsor" means any person, employer, association of employers, joint apprenticeship committee, organization of employees, or other organization under whose auspices a program is operated or is in the process of registration or approval.

"Supervision of apprentices" means direction and oversight of apprentices by any supervisor, foreman, journeyworker, or highly skilled mentor who may be counted as a direct supervisor of an apprentice as long as he is of the same trade or occupation as the apprentice.

"Technical assistance" means guidance provided by department staff in the development, revision, amendment, or processing of a potential or current program sponsor's standards of apprenticeship, apprenticeship agreements, or advice or consultation with a program sponsor to further compliance with this chapter or guidance from the USDOL Office of Apprenticeship to the department on how to remedy nonconformity with 29 CFR Part 29.

"Transfer" means a shift of registration of an apprenticeship agreement from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

"Virginia State Plan for Equal Employment Opportunity in Apprenticeship" means the plan adopted by the Virginia Apprenticeship Council on September 28, 1971, for the purpose of providing equal employment opportunity in apprenticeship and that has been approved by the United States Department of Labor as meeting the requirements of 29 CFR Part 30.

"USDOL" means the United States Department of Labor.

"Work processes" means a defined industry-specific skill set that must be mastered by the apprentice in the work environment during the term of the employed apprenticeship.

16VAC20-21-30. Eligibility for registration of programs and agreements.

A. Eligibility for registration of an apprenticeship program for various federal purposes is conditioned upon a program's conformity with the apprenticeship program standards of this chapter. For a program to be determined by the United States Secretary of Labor as being in conformity with the published standards, the program must apply for registration with the department. The determination by the commissioner that the program meets the apprenticeship program standards is effectuated only through such registration.

B. Only an apprenticeship program or agreement that meets all of the following criteria is eligible for registration:

1. Conformity with the requirements of this chapter and the training is in an apprenticeable occupation having the characteristics in 16VAC20-21-40.

2. Conformity with the requirements of the council and the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

C. Except as provided under subsection D of this section, apprentices must be individually registered under a registered program. Such individual registration may be effected:

1. By filing copies of each individual apprenticeship agreement with the department; or

2. Subject to department approval, by filing a master copy of such agreement followed by a listing of the name and other required data of each individual when apprenticed.

D. The name of a person in probationary employment as an apprentice under an apprenticeship program registered by the department, if not individually registered under such program, must be submitted within 45 days of employment to the department for certification to establish the apprentice as eligible for such probationary employment.

E. The sponsor must notify the department within 45 days of (i) the successful completion of an apprenticeship program, (ii) transfers, (iii) suspensions, and (iv) cancellations of apprenticeship agreements and shall provide a statement of the reasons therefore.

F. Operating apprenticeship programs, when approved by the department, are accorded registration evidenced by a certificate of registration. Programs approved by the department and, as such, complying with the requirements of the council for such programs, must be accorded registration or approval evidenced by a similar certificate or other written indicia.

G. Applications for new programs that the department determines meet the required standards established by the council for program registration must be given provisional approval for a period of one year. The department shall review all new programs for quality and for conformity with the requirements of this chapter at the end of the first year after registration. At that time:

1. A program that conforms with the requirements of this chapter (i) may be made permanent or (ii) may continue to be provisionally approved through the first full training cycle.

2. A program not in operation or not conforming to this chapter during the provisional approval period must be recommended for deregistration procedures.

H. The department must review all programs for quality and for conformity with the requirements of the council and this chapter at the end of the first full training cycle.

1. A satisfactory review of a provisionally approved program will result in conversion of provisional approval to permanent registration. Subsequent reviews must be conducted no less frequently than every five years. Programs not in operation or not conforming to this chapter must be recommended for deregistration procedures.

2. Any sponsor proposals or applications for modification or change to registered programs must be submitted to the department. The department must make a determination on whether to approve such submissions within 90 days from the date of receipt. If approved, the modification or change will be recorded and acknowledged within 90 days of approval as an amendment to such program. If not approved, the sponsor must be notified of the disapproval and the reasons therefore and provided the appropriate technical assistance.

I. Under a program proposed for registration by an employer or employers' association where the standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or evidence of no objection by the union to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to an existing union that is the collective bargaining agent of the employees to be trained a copy of its application for registration and of the apprenticeship program. The department must provide for receipt of union comments, if any, within 45 days before final action on the application for registration or approval.

J. Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer, a group of employers, or an employer association.

16VAC20-21-40. Criteria for apprenticeable occupations.

An apprenticeable occupation is one that is specified by industry and has all of the following characteristics:

1. It involves skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning.

2. It is clearly identified and commonly recognized throughout an industry.

3. It involves the progressive attainment of manual, mechanical, or technical skills and knowledge that in the industry standard for the occupation would require the completion of at least 2,000 hours of on-the-job learning to attain.

4. It requires related instruction to supplement the on-the-job learning experience.

16VAC20-21-50. Standards of apprenticeship programs.

A. To be eligible for approval and registration by the department, an apprenticeship program must have an organized written plan (i.e., specific program standards) embodying the terms and conditions of employment, training,

and supervision of one or more apprentices in an apprenticeable occupation as defined in this chapter and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

B. The program standards in the written plan must contain provisions that address:

1. The employment and training of the apprentice in a skilled occupation.

2. The term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

a. The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

b. The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

c. The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

d. The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the department of the determination as appropriate to the apprenticeable occupation for which the program standards are registered.

3. An outline of the work processes in which the apprentice will receive supervised work experience and training on the job and the allocation of the approximate amount of time to be spent in each major process.

4. Organized, related instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the department. Every apprenticeship instructor must:

a. Meet the Virginia Community College System requirements for an apprenticeship-related instruction instructor, or be a subject matter expert, who is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

b. Have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction.

5. A progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired. The entry wage must not be less than the minimum wage prescribed by the Fair Labor Standards Act (29 USC § 206(a)(1)), where applicable, unless a higher wage is required by another federal or state statute, by regulation, or by a collective bargaining agreement.

6. Periodic review and evaluation of the apprentice's performance on the job and in related instruction, and the maintenance of appropriate progress records.

7. A numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language must be specific and clearly described as to its application to the job site, workforce, department, or plant.

8. Provisions concerning the ratio of apprentices to journeyworkers.

a. The minimum numeric ratio of apprentices to journeyworkers shall be 1:1 except as noted in subdivision 9 of this subsection. As part of their apprenticeship standards, individual program sponsors shall propose a ratio of apprentices to journeyworkers consistent with (i) proper supervision training, safety, and continuity of employment; (ii) applicable provisions in collective bargaining agreements; and (iii) applicable requirements of recognized licensing boards or authorities.

b. The department will review and approve all ratio proposals based on the explanation and justification provided by each program sponsor. Consideration will be given, but not limited to, the following factors:

(1) Evidence of ability to assure proper supervision, training, safety, and continuity of employment under the proposed ratio;

(2) The specific nature of the industry and occupation involved;

(3) Proposed hiring or upgrading of minorities, females, older workers, dislocated workers, ex-offenders, the handicapped, and veterans; or

(4) Evidence of ability to train under the proposed ratio.

If a ratio proposal is disapproved by the department, the sponsor may appeal the decision in writing to the council. The decision of the council shall be final.

9. Provisions concerning Davis-Bacon job sites.

a. Apprenticeship ratio on Davis-Bacon job sites. Effective July 1, 1993, the minimum numeric ratio of apprentices to journeyworkers for individual program sponsors and for individual contractors signatory to joint and nonjoint apprenticeship programs performing work under the Davis-Bacon Act (40 USC § 3141 et seq.) and related federal prevailing wage laws shall be job site specific and shall be as follows:

(1) One apprentice to the first journeyworker (1:1).

(2) Two apprentices to the first two journeyworkers (2:2).

(3) Two apprentices to the first three journeyworkers (2:3).

(4) Two apprentices to the first four journeyworkers (2:4).

(5) Two apprentices to the first five journeyworkers (2:5).

(6) Three apprentices to the first six journeyworkers (3:6).

(7) One additional apprentice for each two journeyworkers thereafter (3:7, 4:8, 5:10, 5:11, 6:12, etc.).

The ratio for service trucks on Davis-Bacon job sites shall be one apprentice to one journeyworker.

Bids submitted for Davis-Bacon work on or after July 1, 1993, must observe the minimum ratio requirements.

These ratio provisions shall apply until either the Congress of the United States or the USDOL mandates different or uniform ratios for Davis-Bacon work.

b. Other requirements related to Davis-Bacon job sites. Sponsors shall notify the department within 30 days of receipt of a citation alleging a violation of the Davis-Bacon Act affecting any apprentice. The notice must be in a form specified by the policies of the department. Failure to report citations shall be an omission for which the department may consider requiring a remedial action plan or deregistration of the sponsor's program.

The department may deregister sponsors who receive final orders of the USDOL or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.

10. A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship. The probationary period cannot exceed 25% of the length of the program or one year, whichever is shorter.

11. Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction.

12. The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years.

13. The placement of an apprentice under a written apprenticeship agreement that meets the requirements of applicable federal or state statutes or regulation of the department. The agreement must directly or by reference incorporate the standards of the program as part of the agreement.

14. The granting of advanced standing or credit for demonstrated competency, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted.

15. The transfer of an apprentice between apprenticeship programs and within an apprenticeship program, which must be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors and must comply with all of the following requirements:

a. The transferring apprentice must be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor.

b. Transfer must be to the same occupation.

c. A new apprenticeship agreement must be executed when the transfer occurs between program sponsors.

16. Assurance of qualified training personnel and adequate supervision on the job.

17. Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the department.

18. Program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials, which must (i) clearly identify the interim credentials, (ii) demonstrate how these credentials link to the components of the apprenticeable occupation, and (iii) establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials must only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation.

19. Identification of the department as the registering agency.

20. Provision for the registration, cancellation, and deregistration of the program, and for the prompt submission of any program standard modification or amendment to the department for approval.

21. Provision for the registration of apprenticeship agreements modifications and amendments; notice to the department of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

22. The authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause. Cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate.

23. Compliance with 29 CFR Part 30, including the equal opportunity pledge prescribed in 29 CFR 30(b); an affirmative action plan complying with 29 CFR 30.4; and a method for the selection of apprentices authorized by 29 CFR 30.5, or compliance with parallel requirements contained in a state plan for equal opportunity in apprenticeship adopted in conformity with 29 CFR Part 30 and approved by the department. The apprenticeship standards must also include a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of 29 CFR Part 30, as amended, or, if applicable, an approved state plan for equal opportunity in apprenticeship.

24. Contact information, including name, address, telephone number, and email address if appropriate, for the appropriate individual with authority under the program to receive, process, and make disposition of complaints.

25. Recording and maintenance of all records concerning apprenticeship as may be required by the department or by law.

16VAC20-21-60. Program performance standards.

A. Every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

1. Between the date when a program is registered and the date of registration of its first apprentice; or

2. Between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program.

B. The department must evaluate performance of registered apprenticeship programs.

1. The tools and factors to be used must include, but are not limited to:

a. Quality assurance assessments.

b. Virginia State Plan for Equal Employment Opportunity (EEO) in Apprenticeship Compliance Reviews.

c. Completion rates.

2. Any additional tools and factors used by the department in evaluating program performance must adhere to the goals and policies of the department articulated in this chapter and in guidance issued by the USDOL, Office of Apprenticeship.

a. In order to evaluate completion rates, the department must review a program's completion rates in comparison to the national average for completion rates. Based on the review, the department must provide technical assistance to programs with completion rates lower than the national average.

b. Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

16VAC20-21-70. Apprenticeship agreements.

The apprenticeship agreement must contain explicitly or by reference:

1. Names and signatures of the contracting parties (apprentice and the program sponsor or employer) and the signature of a parent or guardian if the apprentice is a minor.

2. The date of birth and, on a voluntary basis, social security number of the apprentice.

3. Contact information of the program sponsor and the department.

4. A statement of the occupation in which the apprentice is to be trained and the beginning date and term (duration) of apprenticeship.

5. A statement showing:

a. The number of hours to be spent by the apprentice in work on the job in a time-based program; a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of the hybrid program.

b. The number of hours to be spent in related instruction in technical subjects related to the occupation, which is recommended to be not less than 144 hours per year.

6. A statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

7. A statement of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated.

8. Statements providing:

a. For a specific period of probation, which cannot exceed 25% of the length of the program or one year, whichever is shorter, during which the apprenticeship agreement may be canceled by either party to the agreement upon written notice to the department, without adverse impact on the sponsor.

b. That, after the probationary period, the agreement may be:

(1) Canceled at the request of the apprentice; or

(2) Suspended or canceled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the department of the final action taken.

9. A reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement.

10. A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex.

11. Contact information (name, address, phone, and email address if appropriate) of the appropriate authority designated under the program to receive, process, and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

16VAC20-21-80. Procedure for deregistration of a registered program.

A. Deregistration of a program may be effected (i) upon the voluntary action of the sponsor by submitting a request to the department for cancellation of the registration in accordance with subsection B of this section or (ii) upon reasonable cause, by the department instituting formal deregistration proceedings in accordance with subsection C of this section.

B. Deregistration at the request of the sponsor. The department may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

1. The registration is canceled at the sponsor's request and the effective date thereof.

2. That, within 15 days of the date of the acknowledgment, the sponsor will notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal purposes that require the commissioner's approval of an apprenticeship program; and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

C. Deregistration upon reasonable cause.

1. Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or the requirements of this chapter, including not but limited to (i) failure to provide on-the-job learning; (ii) failure to provide related instruction; (iii) failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice's skills acquired; or (iv) persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 29 CFR Part 30. For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor:

a. Consistently fails to register at least one apprentice.

b. Shows a pattern of poor quality assessment results over a period of several years.

c. Demonstrates an ongoing pattern of very low completion rates over a period of several years.

d. Shows no indication of improvement in the areas identified by the department during a review process as requiring corrective action.

2. Where it appears the program is not being operated in accordance with the registered standards or with requirements of this chapter the department must notify the program sponsor in writing.

3. The notice sent to the program sponsor's contact person must:

a. Be sent by registered or certified mail with return receipt requested or by personal service.

b. State the shortcoming and the remedy required.

c. State that determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

4. Upon request by the sponsor for good cause, the department may extend the 30-day term for an additional 30 days. During the period for corrective action, the department, within available resources, must assist the sponsor in every reasonable way to achieve conformity.

5. If the required correction is not effected within the allotted period for corrective action, the department must send a notice to the sponsor, by registered or certified mail with return receipt requested or by personal service, stating the following:

a. The notice is sent under this section.

b. Certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and that the sponsor has failed or refused to effect correction.

c. Based upon the stated deficiencies and failure to remedy them, a determination by the department has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of the notice, the sponsor

requests a hearing with the Office of Apprenticeship, USDOL.

d. If the sponsor does not request a hearing, the entire matter will be submitted to the Administrator, Office of Apprenticeship, USDOL, for a decision on the record with respect to deregistration.

6. If the sponsor does not request a hearing, the department will transmit to the administrator a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings, and conferences will include the time, date, place, and persons present. The administrator will make a final order on the basis of the record presented.

7. If the sponsor requests a hearing, the department will submit to the administrator a report containing all the data listed in this section, and the administrator will refer the matter to the Office of Administrative Law Judge of USDOL. An administrative law judge will convene a hearing in accordance with 29 CFR 29.10.

8. The sponsor must, within 15 days of the effective date of the orders of deregistration, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentices from coverage for federal purposes that requires the commissioner's approval of an apprenticeship program; and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

16VAC20-21-90. Reinstatement of program registration.

Any apprenticeship program deregistered under 16VAC20-21-80 may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this chapter. Such evidence must be presented to the department.

16VAC20-21-100. Hearings for deregistration.

All hearings for deregistration will be held by USDOL in accordance with 29 CFR 29.10.

16VAC20-21-110. Limitations.

Nothing in this chapter or in any apprenticeship agreement will operate to invalidate:

1. Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards.

2. Any special provision for veterans, minority persons, or women in the standards, the apprentice qualifications, the operation of the program, or the apprenticeship agreement, which is not otherwise prohibited by any federal or state statute, regulation, or executive order.

16VAC20-21-120. Complaints.

A. This section is not applicable to any complaint concerning discrimination or other equal employment opportunity matters; all such complaints must be submitted, processed, and resolved in accordance with applicable provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

B. Except for matters described in subsection A of this section, any controversy, difference, or discrepancy arising under an apprenticeship agreement that cannot be adjusted, abated, or otherwise resolved locally by the parties and that is not covered by a collective bargaining agreement, may be submitted by an apprentice or the apprentice's authorized representative to the department for review. Matters covered by a collective bargaining agreement are not subject to such review.

C. The complaint must be in writing and signed by the complainant or authorized representative and must be submitted within 60 days of any final local decision. It must set forth the specific matter complained of, together with relevant facts and circumstances. Copies of pertinent documents and correspondence must accompany the complaint.

D. The department will render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found to be necessary and the record before it. During the 90-day period, the department will make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties will be notified that the case is closed. Where departmental efforts yield no resolution, an opinion is rendered and disseminated to all interested parties.

E. A party dissatisfied with the opinion of the department may file a petition for review with the Office of Apprenticeship, USDOL, specifically identifying the controversy, difference, discrepancy, or decision that is at issue. A copy of the petition for review must be concurrently sent to the department.

F. Nothing in this section precludes an apprentice from pursuing any other remedy authorized under another federal, state, or local law.

VA.R. Doc. No. R14-4084; Filed August 4, 2014, 8:06 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board is claiming an exclusion from Article 2 of 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 Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC48-20. Condominium Regulations (amending 18VAC48-20-230, 18VAC48-20-440, 18VAC48-20-690).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: October 9, 2014.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

To conform to changes in the Code of Virginia enacted by Chapter 215 of the 2014 Acts of Assembly, the amendments (i) decrease the condominium unit purchaser's right to cancel the purchase contract from 10 days to five days, (ii) require that the purchase contract state the purchaser's right to cancel in boldface print of not less than 12-point type, and (iii) amend the provisions regarding the public offering statement accordingly.

18VAC48-20-230. Preparation of public offering statement.

The public offering statement shall be clear and legible with pages numbered sequentially. A blank cover or a cover bearing identification information only may be used. Except as elsewhere provided, no portion of the public offering statement may be printed in larger, heavier, or different color type than the remainder of the public offering statement. The first page of the public offering statement shall be substantially as follows.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF CONDOMINIUM:

LOCATION OF CONDOMINIUM:

NAME OF DECLARANT:

ADDRESS OF DECLARANT:

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____

AMENDED: _____

REVISED: _____

This public offering statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a public offering statement be given to every purchaser in order to provide full and accurate disclosure of the significant features of the condominium units being offered. The public offering statement is not intended, however, to be all-inclusive. The purchaser should consult other sources for details not covered by the public offering statement.

The public offering statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The board has carefully reviewed the public offering statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the public offering statement and the material it is intended to summarize, the latter will control.

Under Virginia law a purchaser of a condominium unit is afforded a ~~10-day~~ five-day period during which he may cancel the contract of sale and obtain a full refund of any sums deposited in connection with the contract. The ~~10-day~~ five-day period begins running on the contract date or the date of delivery of a public offering statement, whichever is later. The purchaser should inspect the condominium unit and all common areas and obtain professional advice. If the purchaser elects to cancel, he must deliver notice of cancellation to the declarant by hand or by United States mail, return receipt requested.

The following are violations of Virginia law and should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233:

1. A misrepresentation made in the public offering statement.

2. An oral modification of the public offering statement.

3. A representation that the board has passed on the merits of the condominium units being offered or endorses the condominium.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

18VAC48-20-440. Documents to be included.

Copies of the following documents shall be attached as exhibits to the public offering statement: (i) the declaration; (ii) the bylaws; (iii) the projected budget; (iv) rules and regulations of the unit owners' association; (v) any management contract; (vi) any lease of recreational areas; and (vii) any similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium. Other pertinent documents may be attached to the public offering statement including, without limitation, a purchase agreement containing the cancellation provisions required by § 55-79.88 of the Code of Virginia, a certificate of warranty, a warranty limitation agreement, and a depiction of unit layouts.

18VAC48-20-690. Current public offering statement.

A. A public offering statement is current if its form and content are designated for use pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B and remains current so long as no

material change occurs and any amendment of the public offering statement other than in connection with a material change is made in compliance with 18VAC48-20-670.

B. A public offering statement ceases to be current upon the occurrence of a material change and, subject to the exception provided in 18VAC48-20-700, does not thereafter become current unless and until (i) it is amended pursuant to 18VAC48-20-670 and (ii) the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B or fails to enter, within the times allotted therefor, any of the orders provided for by 18VAC48-20-100 E and G or 18VAC48-20-680 B and C.

C. If the board determines that the public offering statement amended other than in connection with a material change fails to comply with 18VAC48-20-670 that public offering statement ceases to be current as of the date of amendment. Such cessation shall be affected retroactively by the board's entry of an order of noncompliance and nothing contained herein shall limit the declarant's right to use the public offering statement as current prior to the entry of an order of noncompliance. The public offering statement does not thereafter become current unless and until it is corrected and refiled and the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-680 B or fails to enter either of the orders provided for by 18VAC48-20-680 B or C.

D. Upon issuance of a public offering statement amended because of the occurrence of a change that materially and adversely affects the purchaser's bargain, that was caused by the declarant or any agent or affiliate of the declarant, and of the possibility of which the purchaser was not forewarned in the public offering statement given him pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia, then the purchaser's ~~10-day~~ five-day rescission right afforded by subdivision 2 of § 55-79.88 of the Code of Virginia is renewed. The declarant shall deliver the public offering statement so amended and give the purchaser notice of his renewed rescission right as required by 18VAC48-20-710.

VA.R. Doc. No. R15-4097; Filed August 19, 2014, 3:57 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed 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.

Title of Regulation: **20VAC5-318. Water and Wastewater Infrastructure Service Charge (adding 20VAC5-318-10, 20VAC5-318-20).**

Statutory Authority: §§ 12.1-13 and 56-235 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: November 7, 2014.

Agency Contact: Frederick Ochsenhirt, Attorney, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9070, FAX (804) 371-9549, or email frederick.ochsenhirt@scc.virginia.gov.

Summary:

Pursuant to §§ 12.1-13 and 56-235 of the Code of Virginia, the State Corporation Commission is proposing rules to permit Virginia water and wastewater utilities to apply for commission approval of a water and wastewater infrastructure service charge (WWISC) to recover the costs of replacing aging infrastructure and address primary and secondary water quality by prioritizing the highest risk facilities and replacing these on an accelerated basis. The proposed rules establish (i) the parameters for utilities to apply for a WWISC; (ii) the WWISC plan for investing funds collected from ratepayers; and (iii) the WWISC rider, which is a mechanism for collecting charges from customers. The proposed rules also require eligible utilities to file with the commission an annual reconciliation to reconcile the difference between the recognized eligible infrastructure costs and the amounts recovered under the WWISC rider.

AT RICHMOND, AUGUST 19, 2014

PETITION OF VIRGINIA AMERICAN WATER COMPANY, AQUA VIRGINIA, INC., AND MASSANUTTEN PUBLIC SERVICE CORPORATION

CASE NO. PUE-2014-00066

For Rulemaking to establish a Water and Wastewater Infrastructure Service Charge

ORDER ESTABLISHING PROCEEDING

On June 27, 2014, Virginia American Water Company, Aqua Virginia, Inc., and Massanutten Public Service Corporation (collectively, "Petitioners"), filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking to establish rules allowing water and wastewater companies in Virginia to apply to the Commission for the establishment of a Water and Wastewater Infrastructure Service Charge ("WWISC").

Water and wastewater utilities are obligated to provide safe and reliable service to their customers and to have adequate distribution, treatment and production facilities to furnish this

service.[1] According to the Petitioners, much of the water infrastructure in Virginia, and indeed throughout the Country, was installed during the first half of the last century and is quickly approaching the end of its useful life, if it has not already done so.[2] The Petitioners state that the U.S. Environmental Protection Agency estimates that Virginia drinking water facilities will need $6.7 billion in infrastructure investments over the next 20 years.[3]

According to the Petitioners, infrastructure replacement does not generate additional revenue as it does not connect new customers to the system and cannot be easily timed with the filing of a base rate case as such work needs to happen on a relatively constant basis.[4] Thus, the Petitioners request that the Commission initiate a rulemaking that would lead to the adoption of rules that establish a WWISC for water and wastewater utilities. Under the rules, water and wastewater utilities would be permitted to apply to the Commission to establish a plan for investing in eligible infrastructure ("WWISC plan") and for the recovery of the costs of such a program. Through the WWISC plan, utilities would be permitted to replace aging infrastructure and address primary and secondary water quality systematically and to prioritize the highest risk facilities and replace these on an accelerated basis. As part of the WWISC plan, each utility would develop and implement a WWISC rider that would allow for the timely recovery of the costs of these non-revenue producing investments.[5]

The Petitioners assert that promulgation of rules establishing the WWISC and WWISC rider is within the Commission's existing authority under §§ 12.1 and 56-235 of the Code, which charges the Commission with the duty of regulating the rates, charges, services and facilities of all public service companies and gives the Commission the authority to fix just and reasonable rates of such companies. The Petitioners further assert that adoption of the rules proposed in the Petition "is in the public interest as it will establish an efficient mechanism for water and wastewater utilities to accelerate replacement of critical infrastructure to assist the Petitioners in continuing to provide reasonable and adequate service to their customers.[6]

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to consider adopting a regulation to establish a WWISC for water and wastewater utilities. The rules proposed by the Petitioners ("Proposed Rules") are appended to this Order. We direct that notice of the Proposed Rules be given to the public and that interested persons and the Commission Staff be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further direct that the Petitioners serve a copy of this Order upon each of their customers and file a certificate of service.

We direct that any person commenting on the Proposed Rules also address the following questions: (1) does the Commission have authority under the Code to issue the Proposed Rules; and (2) assuming the Commission has such authority, is it appropriate for the Commission to exercise such authority absent specific statutory direction from the Virginia General Assembly?

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2014-00066.

(2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before September 15, 2014, each Petitioner shall serve a copy of this Order upon each of their customers and file a certificate of service no later than September 22, 2014, consistent with the directive above.

(4) On or before November 7, 2014, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested parties shall refer in their comments or requests to Case No. PUE-2014-00066. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(5) Any person commenting on the Proposed Rules shall also address the following questions: (a) does the Commission have authority under the Code to issue the Proposed Rules; and (b) assuming the Commission has such authority, is it appropriate for the Commission to exercise such authority absent specific statutory direction from the Virginia General Assembly?

(6) The Commission Staff shall file any comments on, proposed modifications or supplements to, or request for hearing on the Proposed Rules on or before December 8, 2014.

(7) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Richard D. Gary, Esquire, and Timothy E. Biller, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; and C. Meade Browder, Jr., Esquire, Division of Consumer Counsel, Office of the Attorney General, 900 East Main

Street, Second Floor, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

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[1]See Code of Virginia §§ 56-234 and 56-261 ("Code").

[2]Petition at 2.

[3]Id. at 3; U.S. Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment, 5th Report to Congress, at 18 (Apr. 2013).

[4]Petition at 4.

[5]Id. at 5.

[6]Id. at 6-7.

CHAPTER 318
WATER AND WASTEWATER INFRASTRUCTURE SERVICE CHARGE

20VAC5-318-10. Definitions.

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

"Commission" means the State Corporation Commission.

"Eligible infrastructure" means a water utility project or wastewater utility project that: (i) maintains and enhances safety, reliability, and efficiency; (ii) addresses primary and secondary water quality standards as defined by the Virginia Department of Environmental Quality, Virginia Department of Health, or U.S. Environmental Protection Agency; or (iii) reduces or has the potential to reduce unaccounted-for water, or mitigates negative environmental impacts. Eligible infrastructure shall not include the investment in water utility or wastewater utility infrastructure included in the water or wastewater utility's rate base in its most recent rate case or include projects that increase revenues by directly connecting the infrastructure to new customers.

"Eligible infrastructure costs" includes the following:

1. Return on investment. The utility's rate of return on rate base approved by the State Corporation Commission in the utility's most recent rate case shall be used in WWISC riders. In calculating the return on the investment, the commission shall use the water or wastewater utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the water or wastewater utility's base rates in effect during the construction period of the water and wastewater utility project. If the water or wastewater utility's cost of capital has not been changed by order of the commission within the preceding five years, the commission may require the utility to file an updated weighted average cost of capital, or the utility may propose an updated weighted average cost of capital. The utility may recover the external costs associated with establishing its updated weighted average cost of capital through the WWISC rider. Such external costs shall include legal costs and consultant costs;

2. A revenue conversion factor, including appropriate taxes and an allowance for an uncollectable net charge-off percentage, shall be applied to the required operating income resulting from the eligible infrastructure costs;

3. Depreciation. In calculating depreciation, the commission shall use the water or wastewater utility's current depreciation rates specific to the applicable asset;

4. Property taxes;

5. Carrying costs on the over or under recovery of the eligible infrastructure costs. In calculating the carrying costs, the commission shall use the water or wastewater company's regulatory capital structure as determined in subdivision 1 of this definition; and

6. Unreimbursed costs of relocating facilities due to highway projects.

"Investment" means costs incurred on eligible infrastructure projects net of retirements including planning, development, and construction costs and costs of infrastructure associated therewith.

"In-kind replacement" means replacement with new materials or equipment designed, constructed, and sized to meet current industry standards and federal, state, or local regulation.

"Water utility" means an investor-owned public service company engaged in the business of furnishing water service to the public.

"Wastewater utility" means an investor-owned public service company engaged in the business of furnishing wastewater service to the public.

"Water utility project" means (i) in-kind replacement of transmission and distribution system mains, valves, utility service lines (including meter boxes and appurtenances), meters (including radio frequency meters), and hydrants; (ii) nongrowth related main extensions installed to eliminate dead ends that will address primary and secondary drinking water standards; (iii) equipment and infrastructure installed to address primary and secondary drinking water standards; and (iv) unreimbursed costs of relocating facilities due to highway projects.

"Wastewater utility project" means: (i) non growth related collection main extensions installed to implement solutions to wastewater problems; (ii) in-kind replacement of infrastructure necessary to reduce inflow and infiltration to the collection system to comply with applicable state and federal law and regulations; (iii) improvements required by National Pollutant Discharge Elimination System permits; (iv) unreimbursed costs of relocating facilities due to highway construction or relocation projects; and (v) in-kind replacement of pumps, motors, blowers, tanks, and mechanical equipment.

"WWISC plan" means a plan filed by a water or wastewater utility that identifies proposed types of eligible infrastructure projects and a WWISC rider.

"WWISC rider" means a recovery mechanism that will allow for recovery of the eligible infrastructure costs through a separate mechanism from the customer rates established in a rate case.

20VAC5-318-20. Filing of petition with commission to implement a WWISC plan and rider; recovery of certain costs; procedure.

A. A water or wastewater utility may petition the commission for the approval of a WWISC plan. Such a petition for approval of a WWISC plan shall include the following:

1. A description of the categories, types, and cost estimates of eligible infrastructure projects to be included in the WWISC plan.

2. The effective date of the WWISC rider.

3. Sample computation of the WWISC rider.

4. Duration of the WWISC plan.

5. The method by which the utility will provide annual updates of the WWISC rider.

B. The commission may approve the initial petition for establishment of a WWISC plan and WWISC rider after such notice and opportunity for hearing as the commission may prescribe. The commission shall approve the initial petition if the applicant demonstrates that the WWISC is prudent and reasonable. The commission shall approve or deny, within 180 days, a water or wastewater utility's initial petition for approval of a WWISC plan. An application filed pursuant to this section shall not require the filing of rate case schedules under 20VAC5-201.

C. Once the commission approves the initial petition implementing a WWISC Plan and WWISC rider for a water or wastewater utility, that entity may file tariff updates and, if needed, revised long-term plans on a yearly basis. Following approval of the initial petition, the commission may accept annual updates to the WWISC plan that contain the information in subsection A of this section on an administrative basis.

D. The WWISC rider shall be calculated to recover the ongoing eligible infrastructure costs of water utility projects and wastewater utility projects projected to be placed in service during the water or wastewater utility's next fiscal year. The WWISC rider shall be calculated and updated on a yearly basis to reflect eligible infrastructure projected to be placed in service during the upcoming annual WWISC period.

E. Any WWISC petition and rider that is submitted to and approved by the commission shall be allocated and charged in accordance with appropriate cost causation principles in order to avoid any undue cross subsidization between rate classes.

F. No other revenue requirement or ratemaking issues may be examined in consideration of the application filed pursuant to the provisions of this chapter.

G. At the end of each 12-month period the WWISC rider is in effect, the water or wastewater utility shall reconcile the difference between the recognized eligible infrastructure costs and the amounts recovered under the WWISC rider and shall submit the reconciliation and a proposed WWISC rider adjustment to the commission to recover or refund the difference, as appropriate, through an adjustment to the WWISC rider. The commission shall approve or deny, within 90 days, a water or wastewater utility's proposed WWISC rider adjustment.

H. A water or wastewater utility that has an approved WWISC petition pursuant to this chapter shall file revised rate schedules to reset the WWISC rider to zero when new base rates and charges that incorporate eligible infrastructure costs previously reflected in the currently effective WWISC rider become effective for the water or wastewater utility following a commission order establishing customer rates in a rate case.

I. Costs recovered pursuant to this chapter shall be in addition to all other costs that the water or wastewater utility is permitted to recover and shall not be considered an offset to other commission-approved costs of service or revenue requirements.

J. Upon approval by the commission, a WWISC rider shall be considered an automatic rate adjustment clause for purposes of § 56-235.4 of the Code of Virginia.

VA.R. Doc. No. R15-4121; Filed August 19, 2014, 6:23 p.m.

EXECUTIVE ORDER NUMBER 22 (2014)

Establishing the Commonwealth Council on Childhood Success

Initiative

The optimal development of Virginia's infants, toddlers, and young children is linked to our success as a Commonwealth. Children's earliest experiences have a significant impact on their health, growth, and readiness to succeed.

We must address the basic health, education, and child care needs of young children, including the early identification of intellectual and developmental delays, access to stable housing and nutritious foods, and high quality child care and early education programs. Public and other resources need to be used efficiently and effectively by local, state, and federal agencies, nonprofit organizations, and providers of health care, child care, and education through early intervention and case management.

Establishment of the Council

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including, but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Commonwealth Council on Childhood Success.

Commonwealth Council on Childhood Success ("CCCS")

The Commonwealth Council on Childhood Success shall regularly report to the Governor and the Children's Cabinet. It will conduct a comprehensive, statewide assessment of current programs, services, and local, state, and federal public resources that serve Virginia's children ages 0-8. In coordination with the Children's Cabinet and relevant state agencies, it will serve as a central coordinating entity to identify opportunities and develop recommendations for improvement including, but not limited to: 1) funding for preschool, 2) kindergarten readiness, 3) strategies to close the achievement gap in early elementary years, 4) the quality and accountability of child care programs and providers, and 5) coordination of services for at-risk families. The CCCS will also collaborate with other entities as appropriate. It will seek participation from relevant stakeholders, including the business community, private and nonprofit providers, and advocacy organizations.

Composition of the CCCS

The CCCS shall be chaired by the Lieutenant Governor and consist of representatives of the following: Department of Education; Department of Social Services; Department of Behavioral Health and Developmental Services; Department of Health; programs under part B, Section 619, and part C of the Individuals with Disabilities Education Act; Child Care Development Fund; Virginia's Head Start Collaboration; the Virginia Early Childhood Foundation; local educational agencies; institutions of higher education; local providers of education and child care; local Head Start programs; the business community; the legislature; and others with appropriate expertise, as appointed by the Governor.

Staffing

Staff support for the CCCS will be furnished by the Office of the Lieutenant Governor, and such other agencies and offices as designated by the Governor. The CCCS will serve in an advisory role to the Governor, in accordance with § 2.2-2100 of the Code of Virginia, and will meet upon the call of the Chair at least four times per year. The CCCS will issue an annual report by no later than June 1, and any additional reports as necessary.

Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 11th day of August, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 23 (2014)

Establishing the New Virginia Economy Workforce Initiative

Importance of the Initiative

With its favorable economic climate, quality of life, regulatory environment, and low unemployment rate, Virginia has been designated as the best state for business. Also named the Best State for STEM Jobs, Virginia has the highest concentration of high tech jobs per capita in the nation. In light of these positive factors, it is critical to prepare for changes to Virginia's employment marketplace and retiring workforce.

A new workforce agenda is required to fill jobs of today and the future. Based on current estimates, by 2022, about 500,000 new jobs will be created in Virginia. Over 930,000 workers will be needed to replace Virginia's retiring workforce. Many of these jobs will be in scientific, technical, or healthcare careers, and will require postsecondary education or workforce credentials. Careers in these fields are readily accessible for those who are trained, credentialed, and ready to work. However, we do not have enough tech-savvy frontline workers.

The Commonwealth must devise a long-term, comprehensive plan to equip our workforce with in-demand skill sets that will retain and attract businesses. It is crucial for enough

students to graduate from Virginia's educational institutions to meet the demands from current and prospective employers. Employers must be engaged to determine current and future employment needs.

As Chief Executive Officer and Chief Workforce Development Officer for the Commonwealth of Virginia, and in furtherance of my commitment to workforce development and training, I am dedicated to ensuring that all Virginians are afforded access to a world class education and workforce system. Therefore, in consultation with the Secretary of Commerce and Trade, Chief Workforce Development Advisor, I am directing Virginia's Workforce Development System ("Workforce System"), including the Department for Aging and Rehabilitation Services, Department for the Blind and Vision Impaired, Virginia Community College System, Virginia Economic Development Partnership, Virginia Department of Education, Virginia Employment Commission, Department of Labor and Industry, Department of Social Services, as well as the Virginia Board of Workforce Development, local Workforce Investment Boards ("WIBs"), and other state agencies as identified below to take immediate action to marshal the Commonwealth's education and training resources.

Establishment of the Initiative

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create Establishing the New Virginia Economy Workforce Initiative.

Actions to Drive Virginia's Workforce System

This Executive Order requires Virginia's Workforce System to take the following immediate actions:

1. Establish annual goals and identify opportunities to increase statewide attainment rates of credentials that align with employer needs.

Specialized, skilled, and technical jobs at the technician level currently comprise about 45% of Virginia's labor market. The required training for these jobs is usually acquired through community college degrees, certificate programs, apprenticeships, certifications, licenses, or other career-related credentials. As the demand for new workers with specialized skills increases, the Commonwealth must act quickly to address industry needs, fill the workforce gap, and foster new opportunities.

• "Pathway to 50K" – Virginia will set a goal of attaining 50,000 STEM-H credentials, licenses, apprenticeships, and associate degrees that meet the immediate workforce needs during my administration. Many of these jobs will have high individual wages and bring a substantial return on investment to the gross state product.

• Action Item: By October 31, 2014, state agencies including the Department for Aging and Rehabilitative Services, Department of Education, Department of Labor and Industry, Department of Social Services, Virginia Community College System, and local WIBs must each produce a report for the Secretary of Commerce and Trade that will incorporate the current workforce credential attainment levels from FY2013, and regional business and industry needs. After reviewing the baseline data, each agency and WIB will establish an annual goal and strategies for the next three years to increase attainments rates and identify barriers to credential attainment to meet the Governor's goal of 50,000 credentials. The reports must also identify opportunities to take immediate action for changing state policies, funding, or applying for federal waivers to increase credential rates. In addition, local WIBs will work with local businesses and industry sectors, local chambers of commerce, and local community colleges to identify and prioritize those workforce credentials most in demand by employers in the WIBs' regions. Transparency of credential attainment will be provided by an online Commonwealth Scorecard of Economic Opportunity that will be hosted by the State Council of Higher Education for Virginia.

• Action Item: By December 31, 2014, the Secretary of Commerce and Trade will approve a plan for implementing new statewide common metrics and methods of measuring postsecondary education/workforce credential attainment, employment, wages, professional mobility, and return on investment. Currently, the only established performance metrics for most of Virginia's publicly funded workforce programs are those from various federal agencies. To better align Virginia's workforce programs with a common goal of continued economic development, the state will, for the first time, introduce common performance metrics for all publicly funded workforce programs.

2. Create seamless transitions for Virginia's veterans by providing high quality education and workforce services that accelerate career opportunities.

At present, over 840,000 veterans reside in Virginia. Since 2000, Virginia has had high growth in its veteran population, and, more specifically, those veterans under the age of 25. With a strong military presence, defense activities, and civilian contractors, Virginia is a leader of veteran employment strategies through the Department of Veterans Services' Virginia Values Veterans (V3) program. V3 educates employers to recruit, hire, and retain veterans. However, more resources and services are needed to enhance this program. In addition, actual skill sets and academic transcripts must be quickly evaluated for transferability. Virginia must take a multifaceted approach to building a comprehensive veteran workforce services initiative.

• "Our Patriot Pledge" - Virginia will request that 10,000 businesses sign pledges of commitment for hiring our veterans. In addition, by the end of the administration, Virginia will double the number of veterans hired through the V3 program.

• Action Item: By November 30, 2014, the Secretary of Commerce and Trade, in consultation with Virginia's Workforce System, the Secretary of Education, the Secretary of Veterans and Defense Affairs, the Department of Veterans Services, and each of the education and workforce development agencies and programs within Virginia's Workforce System will present a plan to the Governor on how to recruit and retain veterans in Virginia. The plan will outline how Virginia will convert military experience and training into academic or workforce credentials, simplify and accelerate the education and workforce credentialing process toward a career, create online portals with information and services that support the transition process, and build an awareness of careers and services that Virginia offers as the preeminent state for veterans.

3. Diversify the economy by providing workers with skills to meet new private sector needs, encouraging innovation through entrepreneurship, retooling regions for economic advancement, and educating Virginia's workforce for the future.

Roughly thirty percent of Virginia's economy is tied to the federal government. Virginia needs to strengthen its economy by encouraging the growth of robust industry sectors that do not rely on government contracting or grant funding.

• "A Diversified Dominion" – Virginia will seek to diversify the economy by increasing support for small businesses, start-ups, entrepreneurial ventures, and patent production. The Commonwealth can help advance current industries, while recruiting new ones to maintain our global strength.

• Action Item: The Secretary of Commerce and Trade will work closely with the Virginia Economic Development Partnership, state and local chambers of commerce, trade associations, and Virginia's Workforce System to set a vision for Virginia's future economy. Local, state, and national business trends and forecasts will be evaluated to help shape next steps to retain Virginia's current and future competitive edge. These short-term and long-term goals, recommendations, and strategies will be submitted in a report to the Governor's Office by no later than December 1, 2014.

4. Align workforce supply to current and anticipated employer demands by constructing career pathways and training solutions for the dislocated, underemployed, and future worker.

Virginia will align its workforce supply to current and anticipated employer demands by constructing career pathways and training solutions for the dislocated, underemployed, and future worker. Currently, tens of thousands of jobs are left unfilled in Virginia due to the creation of new jobs and positions available from the recently retired. In Virginia's metropolitan areas, job vacancies for highly skilled and high tech workers average over a month to fill, while a single job in rural Virginia might garner hundreds of applications. Education attainment requirements also differ from industry to industry and can be regionally specific.

• "Real-Time Resources" – Virginia will create the Commonwealth Consortium for Advanced Research and Statistics (CCARS) for workforce and education policy. CCARS will support education and workforce entities through analysis and research to help drive economic development in the Commonwealth. This consortium will provide real-time data about human capital, regional skills gaps, local and state wage data, university research and talent, and availability of local and state workforce programs. The availability of data will increase outcomes-based decision-making which will help create effective and efficient strategies for employment development and job replacement, as well as streamline and target resources. The Secretary of Commerce and Trade will convene a CCARS conference at least once a year.

• Action Item: To better assess and take action regarding regional and state skills gaps in key occupations and industry sectors, the Virginia Employment Commission, in partnership with the Secretary of Commerce and Trade and Virginia's Workforce System, will develop an online dashboard that integrates regional and statewide information about the supply of workforce credentials, as well as information about college degrees, and other academic credentials.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing, and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of August, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 24 (2014)

Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud

Importance of the Issue

The misclassification of employees as "independent contractors" undermines businesses that follow the law,

deprives the Commonwealth of millions of dollars in tax revenues, and prevents workers from receiving legal protections and benefits.

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) found that one third of audited employers in certain industries misclassify their employees. By failing to purchase workers' compensation insurance, pay unemployment insurance and payroll taxes, or comply with minimum wage and overtime laws, employers lower their costs up to 40%, placing other employers at a competitive disadvantage.

Based on state and national studies, JLARC estimated that worker misclassification lowers Virginia's state income tax collections as much as $28 million a year. Agencies with relevant enforcement responsibilities, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, and the Workers' Compensation Commission each address only one component of this practice and may not fully coordinate their efforts. In its study, JLARC recommended the establishment of a task force with representatives from the agencies listed above.

Establishment of the Task Force

Pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, and the Code of Virginia, in order to examine the issue of worker misclassification and payroll fraud, I hereby create an Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud (the "Taskforce").

Initiatives

The purpose of the Taskforce is to develop and implement a comprehensive plan with measureable goals to reduce worker misclassification and payroll fraud in Virginia. The activities of the Taskforce should include, but not be limited to:

1. Review statutes and regulations related to worker misclassification and payroll fraud;

2. Evaluate current enforcement practices of the agencies involved;

3. Develop procedures for more effective inter-agency cooperation and joint enforcement;

4. Implement a pilot project for joint enforcement;

5. Develop educational materials for and an outreach strategy to employers;

6. Advise on any technological improvements in worker misclassification and payroll fraud detection; and,

7. Recommend any appropriate changes to relevant legislation or administrative rules.

The Taskforce will be chaired by the Secretary of Commerce and Trade and will include representatives from the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, and the Workers' Compensation Commission.

A workplan will be developed and a report on the progress of the Taskforce will be presented to the Governor by December 1, 2014.

Staffing

Staff necessary for the Taskforce will be provided by the respective agencies participating with the Taskforce. The estimated direct cost of the Taskforce is $1,000. Funding necessary to support the Taskforce will be provided from funds authorized by § 2.2-135 of the Code of Virginia.

Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 14th day of August, 2014.

/s/ Terence R. McAuliffe
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load for Chestnut Creek

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons regarding the development of an implementation plan (IP) for fecal bacteria and sediment total maximum daily loads (TMDLs) for a 14-mile length of Chestnut Creek from the upstream city limits of Galax downstream to the confluence with the New River (bacteria and sediment impairments) and a 3.68-mile length of Chestnut Creek, from the confluence with Coal Creek downstream to the Galax raw water intake (bacteria impairment only). Chestnut Creek is contained within the Counties of Carroll and Grayson, includes the City of Galax, and the extreme headwaters are located in North Carolina. The TMDL studies for these stream impairments were completed in October 2006, and can be found in the total maximum daily load development for Chestnut Creek: Fecal Bacteria and General Standard (Benthic) study reports on DEQ's website at http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/newrvr/chestnut.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The initial public meeting to discuss the development of the IP for the bacteria and sediment TMDLs will be held on Tuesday, September 23, 2014, at the Department of Forestry office off Route 58 west of Galax, 106 Matthews Lane from 6 p.m. until 8 p.m. At this meeting, the TMDL requirements will be reviewed; IP planning process will be explained; and the public will be informed about the public participation opportunities during plan development. Citizens will be able to offer input and ask questions about the plan.

The 30-day public comment period on the information presented at the meeting will end Thursday, October 23, 2014. A fact sheet on the development of the IP is available upon request. Questions or information requests should be addressed to Dr. Chris L. Burcher, Nonpoint Source Pollution Coordinator with the Virginia Department of Environmental Quality. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Chris Burcher, Department of Environmental Quality, 355 Deadmore Street, Abingdon, VA 24210, email chris.burcher@deq.virginia.gov, telephone (276) 676-4803.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 11 2014, August 12, 2014, and August 18, 2014. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Eighty-Seven (14)

Virginia Lottery's "NASCAR® Championship Banquet" Event Promotion Final Rules for Operation (effective June 11, 2014)

Director's Order Number Eighty-Eight (14)

Virginia Lottery's "Game Face" Promotion Final Rules for Game Operation (effective August 5, 2014)

Director's Order Number Eighty-Nine (14)

"Retailer Recruitment Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective on June 24, 2014, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Ninety (14)

Virginia's Instant Game Lottery 1509 "$5,000 Cash" Final Rules for Game Operation (effective June 24, 2014)

Director's Order Number Ninety-One (14)

Virginia's Instant Game Lottery 1488 "7X the Money" Final Rules for Game Operation (effective June 24, 2014)

Director's Order Number Ninety-Two (14)

Virginia's Instant Game Lottery 1487 "Money Multiplier" Final Rules for Game Operation (effective June 24, 2014)

Director's Order Number Ninety-Four (14)

"Redskins Ticket/Hospitality Tent Chain Account Sales Contests Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective September 1, 2014, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Ninety-Six (14)

Virginia's Computer-Generated Game Lottery "$1,000,000 Money Ball" Final Rules for Game Operation (effective on Sunday, September 14, 2014)

Director's Order Number Ninety-Seven (14)

Virginia's Instant Game Lottery 1499 "20X the Money" Final Rules for Game Operation (effective August 17, 2014)

Director's Order Number Ninety-Eight (14)

Virginia's Instant Game Lottery 1510 "Redskins Game Face!" Final Rules for Game Operation (effective August 5, 2014)

Director's Order Number Ninety-Nine (14)

Virginia's Instant Game Lottery 1473 "Win It All" Final Rules for Game Operation (effective August 5, 2014)

Director's Order Number One Hundred (14)

Virginia's Instant Game Lottery 1458 "High Cards" Final Rules for Game Operation (effective August 17, 2014)

Director's Order Number One Hundred-One (14)

Virginia's Instant Game Lottery 1508 "Jewel 7's" Final Rules for Game Operation (effective August 17, 2014)

Director's Order Number One Hundred-Two (14)

Virginia's Instant Game Lottery 1484 "10X the Money" Final Rules for Game Operation (effective August 17, 2014)

Director's Order Number One Hundred-Three (14)

Virginia Lottery's "Let's Play VA Instagram® Promotion" Final Rules for Operation (effective August 18, 2014)

Director's Order Number One Hundred-Five (14)

Virginia Lottery's "Go for the Gold" Promotion Final Rules for Operation (effective September 16, 2014)

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Quest T & C Apartments, LLC

An enforcement action has been proposed for Quest T & C Apartments, LLC for alleged violations at Town & Country Apartments, Richmond, Virginia. The State Water Control Board proposes to issue a consent special order to Quest T & C Apartments, LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from September 8, 2014, through October 10, 2014.

Proposed Consent Order for W.C. Spratt, Inc.

An enforcement action has been proposed for W.C. Spratt, Inc. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with an unpermitted discharge from the sanitary sewer collection system owned and operated by Stafford County. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 9, 2014, through October 9, 2014.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/connect/commonwealth-calendar.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-880. General Permit for Discharges of Stormwater from Construction Activities.**

Publication: 30:13 VA.R. 1716-1750 February 24, 2014.

Correction to Final Regulation:

Page 1733, column 2, 9VAC25-880-70 A 2 c, line 4, after "specifications" strike ", that"

VA.R. Doc. No. R12-3208; Filed August 15, 2014, 11:00 a.m.