



VIRGINIA

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Virginia Code Commission

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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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair, **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

November 2015 through October 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 10, 2015 (Tuesday)	November 30, 2015
32:8	November 24, 2015 (Tuesday)	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 (Monday)	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Agency Decision

Title of Regulation: 11VAC15-40. Charitable Gaming Regulations.

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Name of Petitioner: Jim McIntire, VTabs.

Nature of Petitioner's Request: Petitioner requests that the Charitable Gaming Board amend Charitable Gaming Regulations to increase the number of electronic pull-tab devices used to facilitate the play of electronic pull-tabs sold, played, and redeemed at any premises pursuant to § 18.2-340.26:1 of the Code of Virginia (i.e., social quarters). Petitioner proposes that if the premises' Certificate of Occupancy establishes that the premises can accommodate more than 150 occupants, then the current limit of five electronic pull-tab devices at these premises should be increased to nine electronic-pull tab devices.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on September 8, 2015, the Charitable Gaming Board considered the petition and public comments, including several letters of support from various stakeholder groups. The board voted to amend the Charitable Gaming Regulations by the standard regulatory process. At the September meeting, the board also authorized staff to file a Notice of Intended Regulatory Action.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

VA.R. Doc. No. R15-32; Filed October 1, 2015, 12:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

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

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

Name of Petitioner: Elena Aponte-Bostwick.

Nature of Petitioner's Request: To add a subsection D to 18VAC90-20-200 to authorize the board to license by endorsement an applicant who has honorably served for a minimum of 10 years as a registered nurse in either a civilian capacity with the U.S. Department of Defense or with the U.S. Department of Veterans Affairs or on active or reserve status in the U.S. Armed Forces, provided the applicant is licensed and in good standing in another U.S. jurisdiction.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to add a subsection to 18VAC90-20-200 was posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on November 2, 2015. Comment on the petition from interested parties is requested until December 2, 2015. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting scheduled for January 26, 2016, to decide whether to make any changes to the regulatory language. After that meeting, the board will let the petitioner know its decision.

Public Comment Deadline: December 2, 2015.

Agency Contact: Elaine J. 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. R16-03; Filed October 2, 2015, 3:32 p.m.

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.

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

Name of Petitioner: Amy Schlake.

Nature of Petitioner's Request: To amend the definition of surgery to allow veterinary technicians to perform single layer closure of the gingival flap created by a veterinarian.

Agency Plan for Disposition of Request: The petition will be published on November 2, 2015, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment ending December 2, 2015. 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 first meeting after the comment period, which is tentatively scheduled for February 10, 2016.

Public Comment Deadline: December 2, 2015.

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

Petitions for Rulemaking

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

VA.R. Doc. No. R16-04; Filed October 13, 2015, 4:54 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

DEPARTMENT OF LAW

Fast-Track Regulation

Title of Regulation: **1VAC45-5. Public Participation Guidelines (adding 1VAC45-5-10 through 1VAC45-5-110).**

Statutory Authority: § 2.2-4007.02 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 2, 2015.

Effective Date: December 17, 2015.

Agency Contact: Christopher J. Pitera, Assistant Attorney General and Regulatory Coordinator, Department of Law, 900 East Main Street, Richmond, VA 23219, telephone (804) 786-6576, FAX (804) 786-4839, or email cpitera@oag.state.va.us.

Basis: The Department of Law's legal basis for the promulgation of its initial public participation guidelines is § 2.2-4007.02 of the Code of Virginia. The department's Division of Human Rights is authorized to adopt, promulgate, amend, and rescind regulations related to carrying out its statutory duties by § 2.2-520 B 2 of the Code of Virginia. The department is also authorized to promulgate regulations for the issuance of a consumer investigative demand under the Virginia Antitrust Act pursuant to § 59.1-9.10 M of the Code of Virginia.

Purpose: The purpose of adopting and promulgating the initial public participation guidelines is to ensure the regulatory review process used by the department with regard to the regulations it adopts, promulgates, amends, or rescinds is generally consistent with the rulemaking process used by other Virginia rulemaking bodies.

Rationale for Using Fast-Track Process: The promulgation of this regulation should be noncontroversial because the department is merely adopting the model public participation guidelines developed by the Virginia Department of Planning and Budget.

Substance: The Department of Law is adopting its initial public participation guidelines because it now is responsible for promulgating regulations for the former Virginia Human Rights Council after the operations of that agency were transferred to the department's Division of Human Rights pursuant to the General Assembly's government reorganization legislation (Chapters 803 and 835 of the 2012 Acts of Assembly) effective July 1, 2012. The department's

regulations may be subject to periodic regulatory review, thus necessitating the department's need to adopt its initial public participation guidelines, which are based upon the model public participation guidelines issued by the Virginia Department of Planning and Budget. The public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations. Under § 2.2-4007.02 of the Code of Virginia, rulemaking bodies are required to adopt public participation guidelines and to use these guidelines in the development of their regulations. Adoption of public participation guidelines will ensure the department's rulemaking process is consistent with the process used by other Virginia rulemaking bodies.

There are no substantive provisions or changes to the model public participation guidelines offered to executive agencies by the Virginia Department of Planning and Budget.

Issues: The primary advantage of this regulation is that the department will have in place public participation guidelines consistent with the Governor's executive agencies that will guide future regulatory action by the department. It is expected that the guidelines will help facilitate the participation of the interested members of the public in the regulatory activities undertaken by the department. There are no disadvantages to taking this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Law (Department) proposes to adopt the model public participation guidelines (PPGs) developed by the Department of Planning and Budget in consultation with the Office of the Attorney General (as required by Chapter 321 of the 2008 Acts of Assembly). The Department is proposing its initial PPG regulation now since it has become responsible for promulgating regulations for the former Virginia Human Rights Council after the operations of that agency was transferred to the Department's Division of Human Rights pursuant to the General Assembly's government reorganization legislation (2012 Acts, cc. 803, 835), effective July 1, 2012.

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

Estimated Economic Impact. The purpose of the model PPG legislation is threefold: first, to ensure that each agency or board has a current set of PPGs in place. Second, to ensure that each agency or board's PPG incorporates the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists. Last, but perhaps most importantly, to have uniform

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guidelines in place to facilitate citizen participation in rulemaking and to make those guidelines consistent, to the extent possible, among all executive branch boards and agencies. For all of these reasons, citizens who are interested in participating in the Department's rulemaking process will benefit from the promulgation of the PPG.

Businesses and Entities Affected. The proposed regulations affect any of Virginia's 8 million citizens who are interested in participating in the Department's rulemaking process.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

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

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

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

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

Real Estate Development Costs. The proposed amendments are unlikely to affect real estate development costs.

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,

- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The regulations are based on model public participation guidelines issued by the Department of Planning and Budget pursuant to Chapter 321 of the 2008 Acts of Assembly. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations. The public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory actions; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 5

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

1VAC45-5-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Department of Law. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

1VAC45-5-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Law, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending, or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov that has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies,

which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

1VAC45-5-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

1VAC45-5-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 1VAC45-5-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed or a repropoed regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

1VAC45-5-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency and (ii) be accompanied by and represented by counsel or other representative. Such

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opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

1VAC45-5-60. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider, and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC45-5-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

1VAC45-5-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

1VAC45-5-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC45-5-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

1VAC45-5-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R16-3495; Filed October 8, 2015, 1:13 p.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Reproposed Regulation

Title of Regulation: 8VAC20-730. Regulations Governing the Collection and Reporting of Truancy-Related Data and Student Attendance Policies (adding 8VAC20-730-10, 8VAC20-730-20, 8VAC20-730-30).

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

Public Hearing Information:

November 19, 2015 - 11 a.m. - 22nd Floor Conference Room, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. The public hearing will begin immediately following adjournment of the Board of Education business meeting.

Public Comment Deadline: December 2, 2015.

Agency Contact: Dr. Cynthia Cave, Director of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2818, FAX (804) 225-2524, or email cynthia.cave@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia authorizes the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties. The board is responsible for enforcing the compulsory school attendance statutes.

Section 22.1-258 of the Code of Virginia requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence. Section 22.1-260 B requires reporting conference data to the Superintendent of Public Instruction annually.

Section 4112 of the No Child Left Behind Act (20 USC § 7112) mandates truancy data to be collected at the local level by each school and be reported to the state Department of Education. Data for each individual school will be made public. The aggregated state data results will be reported to the U.S. Department of Education.

Purpose: The primary goal of the Board of Education is to set forth definitions for data collection, procedures, and responsibilities of the participants to address nonattendance issues. Enacting these regulations should enhance daily school attendance and decrease referrals to court services for truancy.

The intent of the Board of Education to (i) provide for consistent and accurate data collection and reporting; (ii) improve attendance related policies, procedures, and evidence-based prevention and intervention practices; (iii) enhance school staffs' capability to identify students with nonattendance issues early, intervene and provide support, and manage and monitor case progress; (iv) create a positive impact on the family, the student, school divisions, and court services in their efforts to improve school attendance; (v) increase a student's opportunity to benefit from a quality education in preparation for a career or post-secondary education; (vi) create a climate for improving communication, cooperation, and coordination of services among community service agencies and public systems to address issues manifested in truancy behavior; and (vii) encourage dissemination of information to increase public knowledge of the importance of regular school attendance and these regulations.

Regulations

Substance: The repropoed regulations are organized into three parts as follows:

1. Part I provides the definition of terms, such as "attendance plan," "excused absence," and "unexcused absence."
2. Part II articulates the procedures and responsibilities for early identification of and intervention with nonattendance behavior and the issues that manifest truancy. This part delineates processes for assisting the student and family in preventing nonattendance and defines the steps to intercede.
3. Part III identifies the attendance data to be reported to the Virginia Department of Education, which includes (i) for each individual student all excused and unexcused absences; (ii) students with five, six or more unexcused absences; (iii) the number of attendance plans developed and conferences scheduled and held; and (iv) the number of petitions made to court or proceedings against parents.

Issues: The proposed regulations pose no disadvantage to the public or the Commonwealth. The proposed regulations will serve to more accurately collect daily school attendance and nonattendance data and guide early identification and intervention processes to remove barriers that disengage a student from school, thus improving school attendance. The procedures in the repropoed regulations align with the Code of Virginia and reflect those requirements.

Students who attend school daily, kindergarten through grade 12, are more likely to graduate. Students who do not attend school regularly are more likely to experience academic failure, school dropout, criminal and violent acts, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy, and social isolation. Due to the strong link between truancy and these negative consequences, it is critical to address attendance issues early and effectively.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Code of Virginia includes required procedures for intervening with students who have unexcused absences and required truancy data collection and reporting. The Board of Education proposes these regulations to provide: 1) clarifying definitions to help ensure consistency in reported data across school divisions and improved understanding of required truancy procedures, 2) recommended options for satisfying the required procedures for intervening with students who have unexcused absences, and 3) further specificity of the required truancy data.

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

Estimated Economic Impact. Code of Virginia Section 22.1-258 requires each school division to create an attendance plan for any student with five unexcused absences and to schedule

a conference with parents after the sixth unexcused absence ... upon the next unexcused absence by such pupil, the school attendance officer shall enforce compulsory attendance by "(i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § 16.1-288 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or 22.1-262...." Further, Section 22.1-260.B requires that "At the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually."

According to the Department of Education (Department), there has been some uncertainty of the options available to local school divisions in satisfying the required procedures for intervening with students who have unexcused absences. Additionally, there has been inconsistency in the truancy data reported by school divisions. The proposed clarifying definitions and listing of recommended options produce no cost and will likely produce some benefit in addressing the problem of truancy. The proposed additional specificity of truancy data to be reported will be beneficial in that it will likely produce more consistent and accurate information for use by analysts and policymakers. It may require a very small addition in staff time for some school divisions, but this potential very small cost would likely be significantly smaller than the benefit of having more accurate and consistent data.

Businesses and Entities Affected. The proposed amendments affect the 132 public school divisions in the Commonwealth.

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

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

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

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

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate.

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-

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

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

Summary:

The repropoed regulations establish criteria for truancy data collection and a procedure for intervening with a student who has unexcused absences. The regulations provide definitions to promote consistent data collection and reporting among school divisions and to the Virginia Department of Education, recommend options for satisfying the required procedures for intervening with students who have unexcused absences, and direct a referral to court services when a student is noncompliant with compulsory attendance law.

CHAPTER 730

REGULATIONS GOVERNING THE COLLECTION AND REPORTING OF TRUANCY [-RELATED DATA AND STUDENT ATTENDANCE POLICIES]

8VAC20-730-10. Definitions.

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

"Attendance conference" means a face-to-face meeting, at a minimum, after the sixth unexcused absence among school staff, parents, and student [(if appropriate)]. The conference may include [, if necessary,] community representatives to [~~discuss the current attendance plan and make modifications to support regular school attendance~~ participate in resolving issues related to nonattendance and revisions to the current attendance plan if necessary].

"Attendance plan" means [~~action steps~~ a plan] developed [jointly] by a school representative, [such as a school principal or his designee or attendance officer;] parent [;] and student [(if appropriate)] to [resolve the student's nonattendance and] engage the student in regular school attendance. The plan shall identify [reasons for nonattendance and] academic, social, emotional, and familial barriers that impede daily attendance along with positive strategies to [address such reasons and impedances and] support regular attendance. This plan may include school-based activities or suggested referrals to community supports, or both.

"Court referral" means [~~referral~~ filing a complaint] to the Juvenile and Domestic Relations Court [~~intake worker~~] after the student's seventh unexcused absence. [Copies Documentation of interventions regarding the student's unexcused absences, such as copies] of the attendance plan and documentation of conference meetings [, and compliance with § 22.1-258 of the Code of Virginia] will be provided to the intake worker.

"Excused absence" means an absence of an entire assigned instructional school day with [~~an excuse~~ a reason] acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school [~~authority~~ administration] with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. [Expelled and suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension or expulsion may be considered excused for the period of the suspension or expulsion.]

"Instructional school day" means the length of a regularly scheduled school day for an individual student.

"Multi-disciplinary team" means a school-based team that [~~convenes on a regular basis~~ may be convened] to review student records and to [identify an integrated system of care for the student in need, including (i) participate in] prevention, early intervention, and [provision of] support services [and (ii) to address unexcused absences, including] school-based case management. These services should address academic, social, emotional, and familial issues in order to improve regular school attendance. [Members of the team meet confidentially with the parent and the student (if appropriate) to develop, evaluate, and update action steps and supports.] Team members may include, but are not limited to, the following: an administrator, school counselor, social worker or psychologist, student assistance specialist, special education and regular education teacher, and attendance officer.

Regulations

"Parent" means the parent or parents, guardian or guardians [, legal custodian or legal custodians,] or other person or persons having legal control [or charge] of the student.

"Truancy" means the act of accruing one or more unexcused absences.

"Unexcused absence" means an absence where (i) [~~either~~] the student misses his scheduled instructional school day in its entirety [~~or misses part of the scheduled instructional school day without permission from an administrator~~] and (ii) no indication has been received by school personnel within three days of the absence that the student's parent is aware and supports the absence, or the parent provides [~~an excuse~~ a reason for the absence] that is unacceptable to the school administration. [~~An administrator~~ The school administration] may change an unexcused absence to an excused absence when [it determines that] the parent has provided an acceptable [~~excuse~~ reason meeting criteria] for the student's absence or there are extenuating circumstances. [~~Absences resulting from suspensions shall not be considered unexcused.~~]

8VAC20-730-20. Unexcused absences intervention process and responsibilities.

A. [Each local school board shall provide guidance regarding what would constitute an excused absence in order to address when the explanation provided by the parent will be determined to be reasonable and acceptable.

B. Each local school board shall develop procedures to ensure that appropriate interventions will be implemented when a student engages in a pattern of absences less than a full day, the explanation for which, if it were a full-day absence, would not be deemed an excused absence.

C.] The following intervention steps shall be implemented to respond to unexcused absences from school and to engage students in regular school attendance.

1. Whenever a student fails to report to school on a regularly scheduled school day and no information has been received by school personnel that the student's parent is aware of and supports the absence, the school principal or designee, attendance officer, or other school personnel or volunteer will notify the parent by phone or email or any other electronic means to obtain an explanation. The school staff shall record the student's absence for each day as "excused" or "unexcused." [Early intervention with the student and parent or parents shall take place for repeated unexcused absences.]

2. When a student has received five unexcused absences, the school principal or designee or the attendance officer shall make a reasonable effort to ensure that direct contact is made with the parent. The parent shall be contacted either in a face-to-face conference or by telephone. During the direct contact with the parent and the student (if appropriate), reasons for nonattendance shall be documented and the consequences of nonattendance

explained. An attendance plan shall be made [with the student and parent or parents] to resolve the nonattendance issues. The student and parent may be referred to a school-based multi-disciplinary team for assistance implementing the attendance plan and case management.

3. The school principal or designee or the attendance officer shall schedule a face-to-face attendance conference within 10 school days from the date of the student's sixth unexcused absence for the school year. The attendance conference must be held within 15 [school] days from the date of the sixth unexcused absence. The conference shall include the parent, student [~~(when applicable)~~], and school personnel (which may be a representative or representatives from the multi-disciplinary team) and may include community service providers.

4. The school principal or designee shall notify the attendance officer or division superintendent of the student's seventh unexcused absence for the school year. The division superintendent or designee shall contact the Juvenile and Domestic Relations Court intake to file a [~~Child In Need of Supervision (CHINSup) petition or begin~~ complaint alleging the student is a child in need of supervision (CHINSup) or to institute] proceedings against the parent. In addition to documentation of compliance with the notice provisions of § 22.1-258 of the Code of Virginia, [all records of intervention regarding the student's unexcused absences, such as] copies of the conference meeting notes, attendance plan, and supports [~~provided prior to filing the petition~~] shall be presented to the intake worker. [~~The decision shall be made by the intake worker either to divert the case or to file the petition for presentation before the court.~~

~~B. D.] A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including [via] telephone or electronic devices), the location and date of the conference, a summary of what occurred, and follow-up steps. [This record does not become a part of the student's permanent scholastic record.]~~

8VAC20-730-30. Data collection and reporting.

Data collection shall begin on the first day students attend for the school year. Each school division shall provide student level attendance data for each student that includes the number of unexcused absences [~~as~~ in a manner] prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative.

Excused and unexcused absences shall be counted for each individual student and shall be reported to the Virginia Department of Education as follows:

1. All excused and unexcused absences as defined in this chapter for each individual student shall be collected.
2. For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason.
3. For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason.
4. For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason.
5. For each student with seven unexcused absences, whether a court referral or a petition was filed [or if proceedings against the parent or parents were initiated and, if not, the reason].

VA.R. Doc. No. R11-2535; Filed October 6, 2015, 8:37 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC5-40. Existing Stationary Sources (amending 9VAC5-40-7400, 9VAC5-40-7420).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: December 2, 2015.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

This action adds new requirements for the case-by-case determination of reasonably available control technology (RACT) needed in order to meet the U.S. Environmental Protection Agency (EPA) 0.075 parts per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone. On March 6, 2015, EPA amended Subpart X of 40 CFR Part 51, which covers the implementation of the 2008 eight-hour ozone standard (80 FR 12264). The Northern

Virginia Ozone Nonattainment Area, which corresponds to the Northern Virginia Volatile Organic Compound (VOC) and Nitrogen Oxides (NO_x) Emissions Control Areas and which is part of the Ozone Transport Region (OTR), must meet the RACT requirements of 40 CFR 51.1116. This section of the EPA rule specifies dates by when RACT must be implemented in the OTR. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

9VAC5-40-7400. Standard for volatile organic compounds (eight-hour ozone standard).

A. No owner or other person shall cause or permit to be discharged from any affected facility any volatile organic compounds (VOCs) emissions in excess of that resultant from using RACT.

B. The provisions of this section apply to all facilities that (i) are within a stationary source in the emissions control areas specified in Table 4-51B and (ii) are within a stationary source that has a theoretical potential to emit at the applicable source thresholds specified Table 4-51B.

TABLE 4-51B.
Notification and Compliance Dates for Facilities Located in VOC Emissions Control Areas.

Standard	Emissions Control Area	Source Threshold	Notification Date	Compliance Date
<u>1997</u> <u>(0.08</u> <u>ppm)</u>	Northern Virginia	≥ 50 tpy	March 1, 2007	April 1, 2009
<u>2008</u> <u>(0.075</u> <u>ppm)</u>	<u>Northern</u> <u>Virginia</u>	≥ 50 tpy	<u>February 1,</u> <u>2016</u>	<u>January 1,</u> <u>2017</u>

C. For facilities subject to the provisions of this section, the owners shall, by the notification dates specified in Table 4-51B, (i) notify the board of their applicability status, (ii) commit to making a determination as to what constitutes RACT for the facilities, and (iii) provide a schedule acceptable to the board for making this determination and for achieving compliance with the emission standard as expeditiously as possible but no later than the compliance dates specified in Table 4-51B.

D. Nothing in this article shall exempt any facility subject to the provisions of 9VAC5-40-7390 from being subject to the provisions of this section. The board may reevaluate any RACT determination made under 9VAC5-40-7390 and require compliance with a new RACT determination as necessary to implement this section.

E. Upon the request of the board, the owner of a facility subject to or exempt from the provisions of 9VAC5-40-7390 shall provide such information as the board deems necessary to determine if the facility is subject to this section.

Regulations

9VAC5-40-7420. Standard for nitrogen oxides (eight-hour ozone standard).

A. No owner or other person shall cause or permit to be discharged from any affected facility any nitrogen oxides (NO_x) emissions in excess of that resultant from using RACT.

B. Unless the owner demonstrates otherwise to the satisfaction of the board, facilities to which the presumptive RACT provisions of 9VAC5-40-7430 are applicable shall comply with the provisions of subsection A of this section by the use of presumptive RACT.

C. The provisions of this section apply to all facilities that (i) are within a stationary source in the emissions control areas specified in Table 4-51E and (ii) are within a stationary source that has a theoretical potential to emit at the applicable source thresholds specified in Table 4-51E.

TABLE 4-51E.
Notification and Compliance Dates for Facilities Located in NO_x Emissions Control Areas for Which There is No Presumptive RACT.

<u>Standard</u>	Emissions Control Area	Source Threshold	Notification Date	Compliance Date
<u>1997 (0.08 ppm)</u>	Northern Virginia	≥ 100 tpy	March 1, 2007	April 1, 2009
<u>2008 (0.075 ppm)</u>	<u>Northern Virginia</u>	<u>≥ 100 tpy</u>	<u>February 1, 2016</u>	<u>January 1, 2017</u>

D. For facilities subject to the provisions of this section and for which there is no presumptive RACT definition, the owners shall, by the notification dates specified in Table 4-51E, (i) notify the board of their applicability status, (ii) commit to making a determination as to what constitutes RACT for the facilities, and (iii) provide a schedule acceptable to the board for making this determination and for achieving compliance with the emission standard as expeditiously as possible but no later than the compliance dates specified in Table 4-51E.

E. For facilities subject to the provisions of this section and for which there is a presumptive RACT definition, the owners shall, by the notification dates specified in Table 4-51F, (i) notify the board of their applicability status, (ii) commit to accepting the presumptive RACT emission limits as RACT for the applicable facilities or to submitting a demonstration as provided in subsection B of this section, and (iii) provide a schedule acceptable to the board for submitting the demonstration no later than the demonstration dates specified in Table 4-51F, and for achieving compliance with the emission standard as expeditiously as possible but no later than the compliance dates specified in Table 4-51F.

TABLE 4-51F.
Notification and Compliance Dates for Facilities Located in NO_x Emissions Control Areas for Which Presumptive RACT is Defined.

<u>Standard</u>	Emissions Control Area	Source Threshold	Notification Date	Demonstration Date	Compliance Date
<u>1997 (0.08 ppm)</u>	Northern Virginia	≥ 100 tpy	March 1, 2007	June 1, 2007	April 1, 2009
<u>2008 (0.075 ppm)</u>	<u>Northern Virginia</u>	<u>≥ 100 tpy</u>	<u>February 1, 2016</u>	<u>February 1, 2016</u>	<u>January 1, 2017</u>

F. Nothing in this article shall exempt any facility subject to the provisions of 9VAC5-40-7410 from being subject to the provisions of this section. The board may reevaluate any RACT determination made under 9VAC5-40-7410 and require compliance with a new RACT determination as necessary to implement this section.

G. Upon the request of the board, the owner of a facility subject to or exempt from the provisions of 9VAC5-40-7410 shall provide such information as the board deems necessary to determine if the facility is subject to this section.

VA.R. Doc. No. R16-4463; Filed October 9, 2015, 1:58 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Regulation

Title of Regulation: 9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-261, 9VAC20-60-264, 9VAC20-60-265, 9VAC20-60-273, 9VAC20-60-1505).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 4, 2016.

Agency Contact: Debra Miller, Policy and Planning Specialist, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.miller@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties under the Virginia Waste Management Act (Act). Subdivision 11 of § 10.1-1402 states that the board is authorized to "Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable."

Purpose: The Virginia Hazardous Waste Management Regulations (9VAC20-60) provide requirements for the effective management of hazardous waste in the Commonwealth, including the management of mercury-containing lamps by recycling facilities or universal waste handlers. This proposed amendment is intended to revise the current management requirements for these lamps to provide for better protection of human health and the environment.

Substance: In order to obtain U.S. Environmental Protection Agency (EPA) authorization for Virginia's universal waste program for mercury-containing lamps, this regulatory action (i) revises and adds additional requirements for mercury-containing lamp recycling facilities including testing, operational, closure and recordkeeping criteria, and if applicable, financial assurance requirements and (ii) revises and adds requirements for small and large quantity handlers and destination facilities that manage mercury containing lamps.

Issues: The primary purpose of this regulatory action is to develop a set of performance standards and requirements that allow for the crushing of mercury-containing lamps (fluorescent bulbs) in a manner that is protective of human health and the environment. Crushing of mercury-containing

lamps has several benefits for businesses and will help to encourage recycling by making it more economical as compared to recycling intact lamps. Recycling results in the reduction of mercury in the environment, which is important for protection of public health.

The advantages to businesses include (i) reducing storage space over that needed to accumulate intact lamps, (ii) reducing time and labor costs, (iii) reducing emissions from lamp breakage that can occur during storage as well as during transportation, (iv) reducing transportation costs, and (v) making recycling more economical. Advantages to the general public include a reduction of mercury in the environment.

Disadvantages to businesses may include additional regulatory requirements associated with lamp crushing, particularly the annual mercury monitoring requirements and associated costs and additional recordkeeping requirements. These may be offset by the cost advantages.

Advantages to the Commonwealth are the promotion and encouragement of recycling, particularly the recycling of mercury that has known public health and environmental consequences if not disposed of properly. In addition, recycling promotes the Commonwealth's stated waste management hierarchy (i.e., recycling is preferred over incineration or landfill disposal).

This regulatory action is needed in order to obtain federal authorization for lamp crushing. Under federal rules, crushing is not allowed, but states can demonstrate that they have regulatory requirements and controls in place that provide the same level of protection. Currently, businesses in Virginia that are crushing mercury containing lamps may not comply with the federal requirement and risk possible enforcement action by the EPA.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to amend its regulation to set criteria for private businesses and governmental entities (known collectively as universal waste handlers) to safely crush mercury containing lamps (fluorescent bulbs). The Board also proposes to make the rules for entities that recycle mercury containing lamps more specific.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Currently neither the Environmental Protection Agency (EPA) nor the Virginia Department of Environmental Quality (DEQ) has rules in place that allow businesses and governmental entities (military bases, local governments or state government agencies) to crush mercury containing lamps. Currently both EPA and DEQ rules require these entities to box up spent fluorescent lamps and ship them to recycling centers. Because

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the EPA has been working with DEQ to formulate acceptable rules for universal waste handlers to be able to safely crush such lamps for several years, entities in the Commonwealth currently do crush this waste with the tacit approval of the EPA. Universal waste handlers are, however still currently subject to punishment (if the EPA chooses to change its non-enforcement policy) until these regulatory changes are promulgated and have become effective.

Currently, universal waste handlers crush mercury containing lamps using equipment that crushes the lamps, while filtering out any mercury vapor that is released, and then drops the crushed lamps into a drum. Costs associated with this activity include the costs of the bulb crushing unit(s) - \$4,100 per unit, drums (which are reusable and are returned to the entity producing the waste after they are emptied at a recycling center) and HEPA filters - \$177 per filter. The number of filters used per year will vary directly with the volume of lamps crushed by any particular universal waste handler. Costs also may include the cost of buying or renting monitoring equipment for universal waste handlers that crush large volumes of lamps. Board staff estimates that fewer than 100 entities will be required to monitor mercury vapor levels and that the costs of monitoring will likely range between \$500 and \$1,500 per year. Board staff also reports that effected entities that crush very large volumes of lamps may incur costs for writing a closure plan and costs associated with obtaining financial assurance. The one-time cost of preparing a closure plan will likely be less than \$5,000 and obtaining financial assurance will likely be less than \$500 per year. Board staff estimates that only about 10 affected universal waste handlers in the Commonwealth will crush enough lamps to meet the threshold for requiring a closure plan and financial assurance and that all of those will likely be governmental entities. Affected entities may also incur some additional bookkeeping costs that may range up to \$1,000 for entities that have very large volumes of waste lamps that they crush.

If affected entities choose to crush, the costs of crushing will almost certainly be outweighed by savings universal waste handlers will experience on account of not having to box up spent bulbs whole and ship the boxes to recycling facilities. Board staff reached out to affected entities who report that crushing lamps and then sending the much less bulky drums to recycling facilities costs them 50% less (on average) when compared to conventional recycling. In particular, these entities report that crushing saves up to 20 hours of labor per 1,000 bulbs crushed and takes up 80% less space. Savings are also realized because drums are very sturdy and reusable but the boxes used to store and ship intact lamps rarely survive a trip to the recycling center and back to the universal waste handler and so, in effect are one time use storage that must be replaced at some cost.

Businesses and Entities Affected. Board staff estimates that approximately 500 entities will be affected by this proposed regulation. These entities will likely include local

governments, state agencies, military facilities and medium to large businesses that would have large numbers of mercury containing lamps to dispose of. Board staff estimates that less than 10% of these entities would qualify as small businesses.

Localities Particularly Affected. No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that these regulatory changes lower some expenses for businesses, the value of those businesses will likely increase slightly.

Small Businesses: Costs and Other Effects. Since the crushing requirements in this regulation represent an alternative to EPA and DEQ rules for recycling mercury containing lamps, no small businesses is likely to choose to crush lamps under these rules unless such a choice has more utility (is cheaper or more convenient or both) than recycling. Thus, these small businesses are unlikely to incur any net costs on account of this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Since the crushing requirements in this regulation represent an alternative to EPA and DEQ rules for recycling mercury containing lamps, no small businesses is likely to choose to crush lamps under these rules unless such a choice has more utility (is cheaper or more convenient or both) than recycling. Thus, these small businesses are unlikely to incur any net costs on account of this proposed regulation.

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

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The proposed amendments address the management of mercury-containing lamps by recycling facilities or universal waste handlers, including (i) testing, operational, closure, and recordkeeping requirements, and if applicable, financial assurance requirements and (ii) requirements for small and large quantity handlers and destination facilities that manage mercury-containing lamps. The amendments qualify the Virginia mercury-containing lamp universal waste program as a state-equivalent program that permits the crushing of mercury-containing lamps.

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218.
2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.
3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.
5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-81).
6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed ~~herein~~ here, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, ~~under such~~ in accordance with the terms and requirements as shall therein be ascribed described."
7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.
8. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted ~~herein~~.
9. For the purpose of this chapter, any solid waste is a hazardous waste if it is defined to be hazardous waste under the laws or regulations of the state in which it first became a solid waste.
10. In 40 CFR 261.6(c)(1) and 40 CFR 261.6(c)(2) mercury-containing lamp recycling facilities must also comply with all applicable requirements of 9VAC20-60-264 B 34 and 9VAC20-60-265 B 21.

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9VAC20-60-264. Adoption of 40 CFR Part 264 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(i), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed ~~herein~~ here, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, ~~under such in accordance with the terms and requirements as shall therein be ascribed~~ described."

3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center, and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 264.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

6. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

7. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or if the background level of the constituent is below the MCL; or."

8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director.

9. In 40 CFR 264.143(b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b) and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to § 38.2-2416 of the Code of Virginia.

11. Where in 40 CFR 264.143(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

12. The following text shall be substituted for 40 CFR 264.143(d)(8): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit."

13. The following text shall be substituted for 40 CFR 264.143(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii) and 40 CFR 264.147(f)(3)(ii): "A copy of the owner's or operator's audited financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and"

15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A₂ or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in 40 CFR 264.143(f)(1)(ii)(A).

16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism."

17. In addition to the requirements of 40 CFR 264.144, "the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."

18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR 264.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National

Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor."

19. The following text shall be substituted for 40 CFR 264.144(c): "During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 264.144(b)."

20. Where in 40 CFR 264.145(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

21. The following text shall be substituted for 40 CFR 264.145(d)(9): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit."

22. The following text shall be substituted for 40 CFR 264.145(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

23. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

24. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA

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tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

25. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

26. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

28. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

29. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

30. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

31. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source (a source located outside of the United States of America) shall notify the department and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in this section and 9VAC20-60-270. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility that poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the department and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

32. In 40 CFR 264.71, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency, and the reference to "system" means the United States Environmental Protection Agency's national electronic manifest system.

33. Regardless of the provisions of 9VAC20-60-18, the requirements of 40 CFR 264.71(j) are not incorporated into this chapter.

34. Requirements for mercury-containing lamp recycling facilities. The following requirements apply to all facilities that recover or reclaim mercury from lamps.

a. All owners and operators of mercury-containing lamp recycling facilities shall:

(1) Have established markets for the utilization of reclaimed materials and be able to identify these markets to the department;

(2) Only introduce into the processing equipment lamps or devices for which the equipment was specifically

designed to process and operate and maintain processing equipment consistent with the equipment manufacturer's specifications; and

(3) Not speculatively accumulate the materials.

b. If a mercury-containing lamp recycling facility's processed materials are to be delivered to a facility other than a mercury reclamation facility, the owner or operator shall:

(1) Demonstrate proper equipment operation and efficiency by sampling and analytical testing of the processed materials. The testing shall ensure that such processed materials (i) have less than three parts per million of "average mercury" during each consecutive 12-week time period of operations ("average mercury" shall be calculated pursuant to subdivision 34 b (3) of this subsection); (ii) have less than five parts per million of total mercury as reported in the "weekly composite sample of process operations" ("weekly composite sample of process operations" shall be calculated pursuant to subdivision 34 b (3) of this subsection); (iii) are not a hazardous waste; and (iv) comply with 40 CFR Part 268, if applicable.

(2) Retest, reprocess, or deliver to a mercury reclamation facility processed materials that are in excess of the allowable levels of mercury specified in subdivision 34 b (1) of this subsection.

(3) Sample and perform analytical testing of the processed material for total mercury as follows:

(a) Facility operators shall take daily physical samples of the mercury-containing materials at the point at which they exit the processing equipment. These samples shall be representative of the materials processed during that day.

(b) At the beginning of each week, the prior week's daily samples that shall be consolidated into one weekly sample which shall be submitted for chemical analysis of total mercury content using an approved EPA methodology. At least three separate daily samples shall be taken in order to obtain a weekly sample. When a facility is not operating at least three days during a week, that week will be dropped out of the 12-week rolling average as calculated under subdivision 34 b (3) (c) of this subsection. However, all daily samples that are in a week that has been dropped out shall be counted towards the very next weekly sample that is included in a 12-week rolling average. The result of this analysis shall be considered the "weekly composite sample of process operations."

(c) The "average mercury" value calculation shall be the rolling average of weekly composite sample results from samples taken during the most recent 12-week time period with each new weekly composite sample result

replacing the oldest sample result that was used in the previous 12-week period.

c. Mercury-containing lamp recycling facilities shall ensure that the separated materials that are generated from their operations are suitable and safe for their intended end use and shall bear the burden of responsibility for the safety of these materials sold or delivered from the operations. Facilities shall notify in writing receiving sources, other than mercury reclamation facilities, of the amount and type of hazardous substances present in the processed materials as demonstrated by laboratory analysis.

d. Operating requirements. Mercury-containing lamp recycling facilities shall be operated in accordance with the following requirements:

(1) Mercury-containing lamp recycling facilities shall control mercury emissions through the use of a single air handling system with redundant mercury controls and comply with the following:

(a) The owner or operator shall operate, monitor, and maintain an air handling system with redundant air pollution control equipment in order to reduce the mercury content of the air collected during the volume reduction and mercury recovery and reclamation processes.

(b) Redundant air pollution control equipment shall incorporate at least two carbon filters or equivalent technology arranged in a series so that the air passes through both filters before being released. In the event of a single filter failure, each filter shall be designed to ensure compliance with the risk-based protectiveness standards for mercury vapor provided in subdivision 34 e of this subsection.

(c) A sample of air shall be collected after the first carbon filter (or equivalent technology) and upstream of the second once each operating day while mercury-containing lamps or devices are being processed. The mercury content of the sample shall be determined for comparison with the risk-based protectiveness standards provided in subdivision 34 e of this subsection.

(d) The owner or operator shall operate, monitor, and maintain the air pollution control equipment in such a manner as not to exceed the risk-based protectiveness standards under subdivision 34 e of this subsection for mercury vapor downstream of the first carbon filter (or equivalent technology) and upstream of the second carbon filter.

(2) The area in which the processing equipment is located shall be fully enclosed and kept under negative pressure while processing mercury-containing lamps or devices.

e. Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that

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has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment. Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided below or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection in accordance with subdivision 34 g of this subsection. The acute exposure protectiveness standard is 300 µg/m³ for a 10 minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 µg/m³. The following are risk based protectiveness standards at a distance of five feet from the bulb crushing unit:

<u>Monthly Bulb Crushing Duration (X Hours/Month)*</u>	<u>Chronic Exposure Air Emission Limit (µg/m³)</u>	<u>Acute Exposure Air Emission Limit (µg/m³)</u>
<u>X ≥ 32</u>	<u>1.314^{skin} µg/m³</u>	<u>300 µg/m³</u>
<u>8 < X < 32</u>	<u>6.317^{skin} µg/m³</u>	<u>300 µg/m³</u>
<u>X ≤ 8</u>	<u>27.375^{skin} µg/m³</u>	<u>300 µg/m³</u>
<u>*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.</u>		

f. Closure. Mercury-containing lamp recycling facilities must prepare and maintain a closure plan conforming to the requirements of 40 CFR Part 264, Subpart G as adopted by reference in this section. Financial assurance shall be provided to the department in accordance with 40 CFR Part 264, Subpart H as adopted by reference in this section.

g. Recordkeeping requirements. The owner or operator of a mercury-containing lamp recycling facility shall maintain records of monitoring information that (i) specify the date, place, and time of measurement; (ii) provide the methodology used; and (iii) list the analytical results. The records maintained shall include all calibration and maintenance records of monitoring equipment. The owner or operator shall retain records of all monitoring data and supporting information available for department inspection for a period of at least three years from the date of collection.

9VAC20-60-265. Adoption of 40 CFR Part 265 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are parts of 40 CFR Part 265 are also hereby incorporated as parts of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed ~~herein~~ here, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, ~~under such in accordance with the terms and requirements as shall therein be ascribed~~ described."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the department, the administrator and the chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center, and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such other information specifically requested by

the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ground water monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the department.

8. The following text shall be substituted for 40 CFR 265.143(g) and 40 CFR 265.145(g): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is of January 12, 1987, is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a

leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;
- d. Climate, including amount, frequency and pH of precipitation;
- e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
- f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
- b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;
- c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
- d. Protect and maintain, if present, surveyed benchmarks; and
- e. Restrict access to the landfill as appropriate for its post-closure use.

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17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.

b. A permit application as required under 9VAC20-60-270 to address the post-closure care requirements of 40 CFR 264.117 and for ground water monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units that fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ground water contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as

well as the implementation of the applicable ground water monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one-year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

19. In 40 CFR 265.71, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency, and the reference to "system" means the United States Environmental Protection Agency's national electronic manifest system.

20. Regardless of the provisions of 9VAC20-60-18, the requirements of 40 CFR 265.71(j) are not incorporated into this chapter.

21. Requirements for mercury-containing lamp recycling facilities. The following requirements apply to all facilities that recover or reclaim mercury from lamps:

a. All owners and operators of mercury-containing lamp recycling facilities shall:

(1) Have established markets for the utilization of reclaimed materials and be able to identify these markets to the department;

(2) Only introduce into the processing equipment lamps or devices for which the equipment was specifically designed to process and operate and maintain processing equipment consistent with the equipment manufacturer's specifications; and

(3) Not speculatively accumulate the materials.

b. If a mercury-containing lamp recycling facility's processed materials are to be delivered to a facility other than a mercury reclamation facility, the owner or operator shall:

(1) Demonstrate proper equipment operation and efficiency by sampling and analytical testing of the processed materials. The testing shall ensure that such processed materials (i) have less than three parts per million of "average mercury" during each consecutive 12-week time period of operations ("average mercury" shall be calculated pursuant to subdivision 21 b (3) of this subsection); (ii) have less than five parts per million of total mercury as reported in the "weekly composite sample of process operations" ("weekly composite sample of process operations" shall be calculated pursuant to subdivision 21 b (3) of this subsection); (iii) are not a hazardous waste; and (iv) comply with 40 CFR Part 268, if applicable.

(2) Retest, reprocess, or deliver to a mercury reclamation facility processed materials that are in excess of the allowable levels of mercury specified in subdivision 21 b (1) of this subsection.

(3) Sample and perform analytical testing of the processed material for total mercury as follows:

(a) Facility operators shall take daily physical samples of the mercury-containing materials at the point at which they exit the processing equipment. These samples shall be representative of the materials processed during that day.

(b) At the beginning of each week, the prior week's daily samples shall be consolidated into one weekly sample that shall be submitted for chemical analysis of total mercury content using an approved EPA methodology. At least three separate daily samples shall be taken in order to obtain a weekly sample. When a facility is not operating at least three days during a week, that week will be dropped out of the 12-week rolling average as calculated under subdivision 21 b (3) (c) of this subsection. However, all daily samples that are in a week that has been dropped out shall be counted towards the very next weekly sample that is included in a 12-week rolling average. The result of this analysis shall be considered the "weekly composite sample of process operations."

(c) The "average mercury" value calculation shall be the rolling average of weekly composite sample results from samples taken during the most recent 12-week time period with each new weekly composite sample result replacing the oldest sample result that was used in the previous 12-week period.

c. Mercury-containing lamp recycling facilities shall ensure that the separated materials that are generated from their operations are suitable and safe for their intended end use and shall bear the burden of responsibility for the safety of these materials sold or delivered from the operations. Facilities shall notify in writing receiving sources, other than mercury reclamation facilities, of the amount and type of any hazardous substances present in the processed materials as demonstrated by laboratory analysis.

d. Operating requirements. Mercury-containing lamp recycling facilities shall be operated in accordance with the following requirements:

(1) Mercury-containing lamp recycling facilities shall control mercury emissions through the use of a single air handling system with redundant mercury controls and comply with the following:

(a) The owner or operator shall operate, monitor, and maintain an air handling system with redundant air pollution control equipment in order to reduce the mercury content of the air collected during the volume

reduction and mercury recovery and reclamation processes.

(b) Redundant air pollution control equipment shall incorporate at least two carbon filters or equivalent technology arranged in a series so that the air passes through both filters before being released. In the event of a single filter failure, each filter shall be designed to ensure compliance with the risk-based protectiveness standards for mercury vapor provided in subdivision 21 e of this subsection.

(c) A sample of air shall be collected after the first carbon filter (or equivalent technology) and upstream of the second once each operating day while mercury-containing lamps or devices are being processed. The mercury content of the sample shall be determined for comparison with the risk based protectiveness standards provided in subdivision 21 e of this subsection.

(d) The owner or operator shall operate, monitor, and maintain the air pollution control equipment in such a manner as not to exceed the risk-based protectiveness standards under subdivision 21 e of this subsection for mercury vapor downstream of the first carbon filter (or equivalent technology) and upstream of the second carbon filter.

(2) The area in which the processing equipment is located shall be fully enclosed and kept under negative pressure while processing mercury-containing lamps or devices.

e. Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment. Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided below or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection in accordance with subdivision 21 g of this subsection. The acute exposure protectiveness standard is 300 $\mu\text{g}/\text{m}^3$ for a 10 minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 $\mu\text{g}/\text{m}^3$. The following are risk-based protectiveness standards at a distance of five feet from the bulb crushing unit:

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<u>Monthly Bulb Crushing Duration (X Hours/Month)*</u>	<u>Chronic Exposure Air Emission Limit ($\mu\text{g}/\text{m}^3$)</u>	<u>Acute Exposure Air Emission Limit ($\mu\text{g}/\text{m}^3$)</u>
<u>$X \geq 32$</u>	<u>$\frac{1.314^{\text{skin}}}{\mu\text{g}/\text{m}^3}$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>
<u>$8 < X < 32$</u>	<u>$\frac{6.317^{\text{skin}}}{\mu\text{g}/\text{m}^3}$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>
<u>$X \leq 8$</u>	<u>$\frac{27.375^{\text{skin}}}{\mu\text{g}/\text{m}^3}$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>

*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.

f. Closure. Mercury-containing lamp recycling facilities must prepare and maintain a closure plan conforming to the requirements of 40 CFR Part 265, Subpart G as adopted by reference in this section. Financial assurance shall be provided to the department in accordance with 40 CFR Part 265, Subpart H as adopted by reference in this section.

g. Recordkeeping requirements. The owner or operator of a mercury-containing lamp recycling facility shall maintain records of monitoring information that (i) specify the date, place, and time of measurement; (ii) provide the methodology used; and (iii) list the analytical results. The records maintained shall include all calibration and maintenance records of monitoring equipment. The owner or operator shall retain records of all monitoring data and supporting information available for department inspection for a period of at least three years from the date of collection.

9VAC20-60-273. Adoption of 40 CFR Part 273 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 273 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 273 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 273 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 273.32(a)(3), the term "EPA" shall mean the United States Environmental Protection Agency or his designee.
2. In addition to universal wastes included in 40 CFR Part 273, other wastes are defined to be universal wastes in Part

XVI (9VAC20-60-1495 et seq.) of these regulations. Part XVI also contains waste specific requirements associated with the waste defined to be universal waste therein. In 40 CFR 273.1, the definitions in 40 CFR 273.9, and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous waste that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed ~~herein~~ here, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, ~~under such in accordance with the terms and requirements as shall therein be ascribed~~ described." Any listing of universal wastes in 40 CFR Part 273 shall incorporate the universal wastes set out in Part XVI in a manner identical to those included in the federal text; whether, for example, as in 40 CFR 273.32(b)(4), 40 CFR 273.32(b)(5), 40 CFR 273.39(b)(2), and 40 CFR 273.62(a)(20) or as items to be included in a calculation or requirement as in the definitions of "Large Quantity Handler of Universal Waste" and "Small Quantity Handler of Universal Waste."

3. In addition to the requirements ~~for lamps~~ contained in 40 CFR 273, the following requirements shall apply:

a. A used lamp shall be considered to be discarded and a waste on the date the generator permanently removes it from its fixture. An unused lamp becomes a waste on the date the generator discards it since that is the date on which he is deemed to have decided to discard it in accordance with 40 CFR 273.5(c)(2).

~~b. Universal waste lamps may be crushed or intentionally broken on the site of generation to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimizes the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process that incorporates the containment and filtration of process air flows to remove mercury containing vapors and dusts.~~

~~c. All handlers of universal waste (large or small quantity) who crush mercury containing lamps under these universal waste regulations shall comply with the following provisions:~~

~~(1) The handler must use a mercury containing lamp crusher indoors with air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to the protection provided by a HEPA filter, activated charcoal, and a negative air flow (vacuum)~~

through the crusher unit. The crusher must have documentation from the manufacturer that demonstrates that the unit:

(a) Is capable of achieving the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) for mercury of 0.10 milligram per cubic meter in indoor ambient air (under individual site specific use conditions); and

(b) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter of 0.3 microns).

(2) The handler must develop and implement a written procedure specifying how to safely crush universal waste lamps. This procedure must include: type of equipment to be used to crush the lamps safely, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator must receive training in crushing procedures, waste handling and emergency procedures (training must be documented).

(3) Residues, filter media, or other solid waste generated as part of the crushing operation, which are not being reclaimed and which exhibit any characteristics of a hazardous waste, must be managed in accordance with all applicable hazardous waste management requirements.

(4) The handler must ensure that spills of the contents of the universal waste lamps that may occur during crushing operations are cleaned up in accordance with 40 CFR 273.13 (d)(2) or 40 CFR 273.33 (d) (2).

(5) The handler must store the crushed lamps in closed, nonleaking drums or containers that are in good condition. Transfer of the crushed lamps to other drums or containers is not permitted.

(6) Drums or containers used for storage of crushed lamps must be properly sealed and labeled. The label shall bear the words "Universal Waste Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)."

4. A small quantity b. A handler having a waste subject to the requirements of 40 CFR 273.13(a)(3)(i) or 40 CFR 273.33(a)(3)(I) is also subject to 9VAC20-60-270 and Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of this chapter.

c. Small and large quantity handlers of universal waste (i) may only crush mercury-containing lamps for size reduction at the site of generation or under the control of the generator as defined in 9VAC20-60-1505 B 4 and (ii) shall comply with the applicable mercury-containing lamps crushed for size reduction requirements of 9VAC20-60-1505.

d. All large quantity handlers of universal waste lamps (i.e., generators who accumulate 5000 kilograms or more of universal waste lamps) must prepare and maintain a closure plan conforming to the requirements of 40 CFR Part 264, Subpart G as adopted by reference in 9VAC20-60-264. Financial assurance shall be provided to the department in accordance with 40 CFR Part 264, Subpart H as adopted by reference in 9VAC20-60-264.

e. The owner or operator of a destination facility that recycles mercury-containing lamps with or without storing the mercury-containing lamps before they are recycled must comply with all applicable requirements of 9VAC20-60-264 B 34 and 9VAC20-60-265 B 21 of this section for mercury-containing lamp recycling facilities.

9VAC20-60-1505. Additional universal wastes.

Note: At this time, there are no universal wastes that are not also universal wastes under 40 CFR Part 273 or 9VAC20-60-273 B.

A. The Commonwealth of Virginia incorporates at 9VAC20-60-273 A all universal wastes adopted by the federal government at 40 CFR Part 273. In addition to the universal wastes listed in 40 CFR Part 273, the universal wastes listed in this section are also universal wastes in Virginia if the requirements as provided in this section for each particular universal waste are met.

B. Mercury-containing lamps may be crushed for size reduction provided the requirements of this subsection are met.

1. Mercury-containing lamps are crushed under the control of the generator as defined in subdivision 4 of this subsection, and the crushed lamps are sent off site for recycling.

2. The use of mobile crushing units is prohibited. Mobile crushing units include any device or equipment or combination of devices and equipment that is designed to be transported and operated at more than one site.

3. Mercury-containing lamps that are crushed for size reduction by a generator or under the control of the generator as defined in subdivision 4 of this subsection may be managed under the provisions for universal wastes, 9VAC20-60-273, if the owner or operator complies with all the requirements and qualifications of this section.

4. "Under the control of the generator" means:

a. That the mercury-containing lamps are generated and crushed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the universal waste (UW) lamp generator); or

b. That the mercury-containing lamps are generated and crushed at different facilities if the crushing facility is controlled by the generator or if both the generating facility and the crushing facility are controlled by a person as defined in 40 CFR Part 260.10, and if the

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generator provides one of the following certifications: (i) "on behalf of [insert generator facility name], I certify that this facility will send the indicated UW lamps to [insert crushing facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the UW lamps" or (ii) "on behalf of [insert generator facility name] I certify that this facility will send the indicated UW lamps to [insert crushing facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the UW lamps." For purposes of this certification, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in 40 CFR Part 260.10 shall not be deemed to "control" such facilities. The certification shall be submitted to the department in accordance with subdivision 7 (h) of this subsection.

5. Mercury-containing lamp crushing operations that do not meet the definition of "under the control of the generator" in subdivision 4 of this subsection are subject to all applicable requirements for destination facilities in 40 CFR Part 273, Subpart E.

6. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

7. Crushing, handling, and storing mercury-containing lamps shall occur in a safe and controlled manner that minimizes the release of mercury to the environment. Requirements for a safe and controlled manner shall include the following:

a. Mercury-containing lamps shall be crushed in a mechanical unit specifically designed to crush mercury-containing lamps. This unit shall be hermetically sealed, except for air intakes, and under negative pressure. Air intake points must be closed when the unit is not operating.

b. Crushing operations shall occur in a space with its ambient air isolated from other work areas where persons who are not involved in the crushing operation may work. The ambient air from rooms containing crushing operations shall be discharged after filtration directly to an area outside the building where persons are unlikely to be directly exposed. If a situation exists at a particular facility in which the facility determines that discharge of ambient air from a room containing a crushing operation to the outside is technically or financially impracticable, the department may approve an alternated design that allows the discharge of ambient air from a room containing a crushing operation to another internal building space or centralized air circulation system if:

(1) The ambient air is discharged to the internal building space or centralized air circulation system through filtration system capable of capturing both particulate and vapor phase mercury.

(2) The filtration system is maintained as recommended by the manufacturer to ensure that it operates at its design mercury removal efficiency.

(3) Maintenance of the filtration system shall be documented and records of maintenance shall be kept on site.

c. Mercury-containing lamps shall be crushed with a device that is equipped with air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls shall include a HEPA filter, a sorption column of sulfur impregnated activated carbon media, and a negative air flow (vacuum) throughout the unit. The crushing unit shall have documentation from the manufacturer that demonstrates that the unit is equipped as required and:

(1) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter less than 0.3 microns); and

(2) Achieves the air emission limits specified in the risk-based protectiveness standards table of subdivision 7 n (2) of this subsection.

d. Mercury-containing lamps shall be crushed indoors.

e. The transfer of crushed mercury-containing lamps in drums or containers to other drums or containers is not permitted.

f. Crushed mercury-containing lamps shall be stored in closed and hermetically sealed, nonleaking drums or containers that are in good condition (e.g., no severe rusting, no apparent structural defects, and no leaking).

g. Drums or containers used for storage of crushed mercury-containing lamps shall be properly sealed and labeled. The label shall bear the words "universal waste-lamps," "waste lamps," or "used lamps."

h. The generator or facility under the control of the generator shall make written notification to the department of the physical location of the crushing operation no later than 30 calendar days after (insert effective date of this section) for all existing operations or 30 calendar days prior to beginning operation of a new crushing operation. The notification shall include the name of the individual or company that owns the operation; the EPA ID number if one has been issued for the facility; the location of the crushing operation; and the names, addresses, and telephone numbers of the operator and principal contact person or persons. A written notice of changes in the notification data shall be sent to the department within 15 calendar days of the change. The notification shall include the certification

required under subdivision 4 (b) of this subsection if applicable.

i. A written procedure specifying how to safely crush, handle, and store mercury-containing lamps and how to minimize the release of mercury, including during drum changes and malfunctions, shall be developed, implemented, and documented. This procedure shall include (i) the type of equipment to be used to crush mercury-containing lamps safely, (ii) instructions for proper equipment operation and a schedule for maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, (iii) proper waste management practices, and (iv) the use of personal protective equipment to include at a minimum safety glasses or full face shield and cut-proof gloves. The maintenance schedule shall identify all maintenance operations and the frequency with which they must be performed, including replacement of particle filters and the activated carbon media as recommended by the manufacturer of the crushing unit.

j. Maintenance activities shall be documented and records of maintenance shall be maintained and available for inspection per subdivision 8 of this subsection.

k. Each unit operator shall receive initial and annual training in crushing procedures, waste handling, safety, use of personal protective equipment, and emergency procedures, including proper procedures for cleaning up broken mercury-containing lamps. All training shall be documented and records of training shall be maintained and available for inspection per subdivision 8 of this subsection.

l. Residues, filter media, used equipment, other mercury-containing equipment, and other solid waste shall not be placed in the container with the crushed mercury-containing lamps. Any waste materials generated as part of the crushing operation that are determined to be hazardous waste shall be managed under this chapter, as hazardous waste or if not hazardous waste, as a solid waste under the Solid Waste Management Regulations, 9VAC20-81.

m. Any spills of the contents of the mercury-containing lamps that may occur shall be cleaned up in accordance with 40 CFR Part 273.13(d)(2) or 40 CFR Part 273.33(d)(2).

n. All generators or facilities under the control of the generator that crush mercury-containing lamps, except those generators or facilities that crush two hours or less and no more than 220 pounds/100 kilograms (CESQG equivalent) of bulbs per month, shall provide monitoring as follows:

(1) Ambient air within the lamp crushing room and exhaust air from the lamp crushing unit shall be tested for mercury during the first month of using the lamp crushing unit and whenever the unit is modified or replaced, and annually thereafter. In addition, all connection points for hoses circulating air from within the unit, the seal between the unit and the drum, and

openings in the crushing unit (e.g., the lamp feed tube) shall also be tested for mercury release during the first month of lamp crushing operation and annually thereafter. Routine maintenance of the machine does not constitute modified or replaced for purposes of requiring ambient air testing. Ambient air shall be tested within five feet of the lamp crushing device. Exhaust air and other tests shall be performed within two inches of the designated testing points on the lamp crushing device. All mercury testing required by this section shall be performed at a time when the lamp crushing device is being used to crush mercury-containing lamps.

(2) Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry, or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment. Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided below or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection per subdivision 8 of this subsection. The acute exposure protectiveness standard is 300 $\mu\text{g}/\text{m}^3$ for a 10-minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 $\mu\text{g}/\text{m}^3$. Alternately, compliance with the acute exposure protectiveness standard may be demonstrated by comparing the 95% upper confidence level of the mean of the individual data points to the standard. The following are risk-based protectiveness standards at a distance of five feet from the bulb crushing unit:

<u>Monthly Bulb Crushing Duration (X Hours/Month)*</u>	<u>Chronic Exposure Air Emission Limit ($\mu\text{g}/\text{m}^3$)</u>	<u>Acute Exposure Air Emission Limit ($\mu\text{g}/\text{m}^3$)</u>
<u>$X > 32$</u>	<u>$1.314^{\text{skin}} \mu\text{g}/\text{m}^3$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>
<u>$8 < X < 32$</u>	<u>$6.317^{\text{skin}} \mu\text{g}/\text{m}^3$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>
<u>$X \leq 8$</u>	<u>$27.375^{\text{skin}} \mu\text{g}/\text{m}^3$</u>	<u>$300 \mu\text{g}/\text{m}^3$</u>
<u>$X \leq 2$ and no more than 220 lbs/month or 100 kg/month of bulbs crushed</u>	<u>Monitoring not required</u>	<u>Monitoring not required</u>

*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.

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(3) Any lamp crushing device that, when tested as described above, fails to meet the criteria specified in subdivision 7 n (2) of this subsection, must immediately be removed from service. Lamp crushing devices removed from service under this subdivision may not be returned to service until the device has been inspected and repaired, and in subsequent testing has been shown to meet the specified criteria. Test data and documentation of repairs shall be kept in the facility record and available for inspection per subdivision 8 of this subsection.

(4) The facility shall document the amount of time spent crushing lamps and this information shall be maintained in the facility record and available for inspection per subdivision 8 of this subsection.

8. A copy of all records, notifications, certifications, and reports required by this section shall be kept on site and be available for examination by the department for a period of at least three years.

9. All requirements of this section shall be immediately effective for all new facilities beginning operations on or after (insert effective date of this section). All requirements of this section shall be effective for all existing facilities no later than 90 calendar days after (insert effective date of this section).

VA.R. Doc. No. R12-3084; Filed October 9, 2015, 2:06 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to Chapters 104 and 677 of the 2015 Acts of Assembly. The second enactment of Chapters 104 and 677 requires the board to promulgate regulations to implement the provisions of the acts to be effective no later than January 1, 2016, and provides that the State Water Control Board's initial adoption of regulations necessary to implement the provisions of the acts shall be exempt from the provisions of the Administrative Process Act, except that the Department of Environmental Quality shall utilize a regulatory advisory panel to assist in the development of necessary regulations and shall provide an opportunity for public comment on the regulations prior to adoption.

Titles of Regulations: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-10, 9VAC25-20-20, 9VAC25-20-40, 9VAC25-20-60, 9VAC25-20-90, 9VAC25-20-100, 9VAC25-20-146, 9VAC25-20-147, 9VAC25-20-148, 9VAC25-20-149).**

9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10; adding 9VAC25-31-915; repealing 9VAC25-31-475).

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10; adding 9VAC25-32-285; repealing 9VAC25-32-320).

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

Summary:

Chapters 104 and 677 of the 2015 Acts of Assembly contain language to allow localities to adopt ordinances establishing a local monitoring program to test and monitor the land application of solid and semisolid industrial waste. The acts also require the State Water Control Board to adopt regulations imposing a fee of \$5.00 per dry ton on the generators of solid or semisolid industrial waste land applied and establish necessary procedures for managing the funds. The amendments to 9VAC25-20, Fees for Permits and Certificates, (i) incorporate a fee of \$5.00, beginning January 1, 2016, on each dry ton of solid or semisolid industrial waste that is land applied and establish procedures for collecting the fees and (ii) provide that the fees be deposited into the Sludge Management Fund and dispersed to localities for the monitoring and testing of solid or semisolid industrial wastes. The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and the Virginia Pollution Abatement (VPA) Permit Regulation are being revised to modify definitions and include new definitions specific to industrial wastes and to address local enforcement regarding the land application of industrial wastes.

Part I General

9VAC25-20-10. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's Virginia Pollutant Discharge Elimination System Permit Regulation, 9VAC25-31-10; the board's Virginia Pollution Abatement Permit Regulation, 9VAC25-32-10; the board's Virginia Water Protection Permit Program Regulation, 9VAC25-210-10; the board's Surface Water Management Area Regulation, 9VAC25-220-10; and the board's ~~Ground Water~~ Groundwater Withdrawal Regulations, 9VAC25-610-10, including any general permits issued thereunder.

"Applicant" means for the purposes of this chapter any person filing an application for issuance, reissuance, or modification, except as exempted by 9VAC25-20-50, of a permit, certificate or special exception or filing a registration statement or application for coverage under a general permit

issued in response to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the purposes of this chapter the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit, certificate or special exception or for filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit, permit authorization, certificate or special exception requested by the permit, permit authorization, certificate or special exception holder and not exempted by 9VAC25-20-50, the application shall consist of the formal written request and any accompanying documentation submitted by the permit, permit authorization, certificate or special exception holder to initiate the modification.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with 9VAC25-31 or 9VAC25-32.

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals, and expressed in units of English tons.

"Existing permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the board and currently held by an applicant.

"Established fees" means a fee established by the department per dry ton of biosolids or industrial residuals managed by land appliers.

"Industrial residual" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of either treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of utilization, or assimilation fertilizing crops or vegetation or conditioning the soil. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids in accordance with 9VAC25-31 or 9VAC25-32 are not to be considered to be treatment works.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in 9VAC25-31 or 9VAC25-32.

"Local monitor" means a person or persons employed by local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Major modification" means for the purposes of this chapter modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration which is not a minor modification as defined in this regulation.

"Major reservoir" means for the purposes of this chapter any new or expanded reservoir with greater than or equal to 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of greater than or equal to 3,000,000 gallons in any one day.

"Minor modification" means for the purposes of this chapter minor modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration as specified in 9VAC25-31-400, 9VAC25-32-240, ~~9VAC25-210-240~~ 9VAC25-210-180, 9VAC25-220-230, or in 9VAC25-610-330. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Minor reservoir" means for the purposes of this chapter any new or expanded reservoir with less than 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of less than 3,000,000 gallons in any one day.

"New permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the board to an applicant that does not currently hold and has never held a permit, permit authorization, certificate or special exception of that type, for that activity, at that location.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids or industrial residuals in accordance with the provisions of this regulation. The application shall consist of a formal written request and any accompanying documentation submitted by a local government in accordance with a local ordinance.

"Revoked permit" means for the purposes of this chapter an existing permit, permit authorization, certificate or special

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exception which is terminated by the board before its expiration.

"Single jurisdiction" means for the purposes of this chapter a single county or city. The term county includes incorporated towns which are part of the county.

9VAC25-20-20. Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit, permit authorization or certificate which the board has the authority to issue from the applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of biosolids. Section 62.1-44.16 of the Code of Virginia requires the promulgation of regulations requiring the payment of a fee by persons land applying solid or semisolid industrial wastes. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations requiring the payment of a fee by persons land applying biosolids. These regulations establish the required fee assessment and collection system.

9VAC25-20-40. Applicability.

A. This chapter applies to:

1. All applicants for issuance of a new permit, permit authorization or certificate, or reissuance of an existing permit, permit authorization or certificate, except as specifically exempt under 9VAC25-20-50 A. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-130.
2. All permit, permit authorization or certificate holders who request that an existing permit, permit authorization or certificate be modified, except as specifically exempt under 9VAC25-20-50 A 3 or 9VAC25-20-50 A 6. The fee due shall be as specified under 9VAC25-20-120.
3. All land applicers land applying biosolids or industrial residuals on permitted sites in the Commonwealth of Virginia. The fee due shall be as specified under 9VAC25-20-146.

B. An applicant for a permit, permit authorization or certificate involving a permit that is to be revoked and reissued shall be considered an applicant for a new permit. The fee due shall be as specified under 9VAC25-20-110.

C. Permit maintenance fees apply to each Virginia Pollutant Discharge Elimination System (VPDES) permit holder and each Virginia Pollution Abatement (VPA) permit holder, except those specifically exempt under 9VAC25-20-50 B of

this chapter. The fee due shall be as specified under 9VAC25-20-142.

D. Virginia Water Protection (VWP) Individual/Minimum Instream Flow permit fees apply to any permit for the construction of an intake on a stream or river, or to any permit for the construction of a new intake on an existing reservoir. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-120, as applicable.

E. VWP Individual/Reservoir permit fees apply to any permit for the construction of a new reservoir, or the expansion of an existing reservoir in which one of the purposes of the reservoir is for water supply. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-120, as applicable. VWP Individual/Reservoir permit fees do not apply to the construction of any impoundment, pond or lake in which water supply is not part of the project's purpose.

Part II

Payment, Deposits, and Use of Fees

9VAC25-20-60. Due dates.

A. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.

1. Application fees for all new permit applications are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee.
2. For reissuance of permits that expire on or before December 27, 2004, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.
3. An application fee is due on the day an application is submitted for either a major modification or a permit reissuance that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a regularly scheduled renewal of an individual permit for an existing facility, unless the permit for the facility expires on or before December 27, 2004. There is no application fee for a major modification or amendment that is made at the board's initiative.
4. Permit maintenance fees shall be paid to the board by October 1 of each year. Additional permit maintenance fees for facilities that are authorized to land apply, distribute, or market biosolids; are in a toxics management program; or have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls) shall also be paid to the board by October 1 of each year. No permit will be reissued or administratively continued without payment of the required fee.
 - a. Existing individual permit holders with an effective permit as of July 1, 2004 (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1, 2004, unless one of the following conditions apply:

- (1) The permit is terminated prior to October 1, 2004; or
- (2) The permit holder applied or reapplied for a municipal minor VPDES permit with a design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004, and paid the applicable permit application fee.

b. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1 of that same year.

B. Surface Water Withdrawal (SWW) and Groundwater Withdrawal (GWW) permits.

1. All permit application fees are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee. No permit will be administratively continued without payment of the required fee.

2. For reissuance of GWW permits that expire on or before March 27, 2005, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. Application fees for major modifications or amendments are due on the day an application is submitted. Applications will not be processed without payment of the required fee. There is no fee for a major modification or amendment that is made at the board's initiative.

C. Virginia Water Protection (VWP) permits.

1. VWP permit application fees shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, draft permits or authorizations shall not be issued prior to payment of the required fee. No permit or permit authorization shall be administratively continued without payment of the required fee.

2. VWP application fees for major modifications shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, major modifications shall not be issued prior to payment of the required fee. There is no application fee for a major modification that is made at the board's initiative.

D. ~~Biosolids Land~~ Land application fees for biosolids and industrial residuals. The department may bill the land applier for amounts due following the submission of the monthly land application report. Payments are due 30 days after receipt of a bill from the department. No permit or modification of an existing permit will be approved in the jurisdiction where payment of the established fee by the land applier has not been received by the due date; until such time that the fees are paid in full. Existing permits may be revoked or approved sources may be reclassified as unapproved unless the required fee is paid by the due date. No permit will be

reissued or administratively continued or modified without full payment of any past due fee.

9VAC25-20-90. Deposit and use of fees.

A. Sludge Management Fund. All ~~biosolids~~ land application fees collected from permit holders who land apply biosolids or industrial residuals in the Commonwealth of Virginia, and fees collected from permit holders and persons applying for permits and permit modifications pursuant to § 62.1-44.19:3 of the Code of Virginia shall be deposited into the Sludge Management Fund established by, and used and accounted for as specified in §§ 62.1-44.16 and 62.1-44.19:3 of the Code of Virginia. Payments to the Department of Conservation and Recreation for their costs related to implementation of the biosolids land application program and to localities with duly adopted ordinances providing for the testing and monitoring of the land application of biosolids or industrial residuals will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the department.

B. State Water Control Board Permit Program Fund. All fees collected in response to this chapter and not deposited into the Sludge Management Fund shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in § 62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

Part III

Determination of Fee Amount

9VAC25-20-100. General.

Each application for a new permit, permit authorization or certificate, each application for reissuance of a permit, permit authorization or certificate, each application for major modification of a permit, permit authorization or certificate, each revocation and reissuance of a permit, permit authorization or certificate, and each application of a dry ton of biosolids or industrial residuals is a separate action and shall be assessed a separate fee, as applicable. The fees for each type of permit, permit authorization or certificate that the board has the authority to issue, reissue or modify will be as specified in this part.

Part IV

Biosolids and Industrial Residuals Fees and Reimbursable Costs

9VAC25-20-146. Established fees.

A. Land appliers shall remit the established fees to the department as specified in this regulation. The land appliers shall collect the required fees from the owners of the sewage treatment works and facilities that generate Class B biosolids

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and exceptional quality biosolids cake that are land applied. The land appliers shall collect the required fees from the owners of the industrial waste treatment facilities and other facilities that generate the industrial residuals that are land applied in localities that have adopted ordinances in accordance with § 62.1-44.16 D of the Code of Virginia. Such works and facilities shall be approved sources of biosolids or industrial residuals in accordance with 9VAC25-31 or 9VAC25-32. Land application shall only include biosolids or industrial residuals from approved sources as listed in the land application permit. The established fee shall be imposed on each dry ton of Class B biosolids and exceptional quality biosolids cake that is land applied in the Commonwealth of Virginia in accordance with 9VAC25-31 or 9VAC25-32. The established fee shall be imposed on each dry ton of industrial residuals that is land applied in localities that have adopted ordinances in accordance with § 62.1-44.16 D of the Code of Virginia.

B. The amount of the established fee and disbursement are as follows:

1. The fee shall be \$7.50 per dry ton of Class B biosolids land applied in the Commonwealth of Virginia.
2. The fee shall be \$3.75 per dry ton of exceptional quality biosolids land applied as a cake in the Commonwealth of Virginia.
3. The fee shall be \$5.00 per dry ton of industrial residuals land applied in localities that have adopted ordinances in accordance with § 62.1-44.16 D of the Code of Virginia.
4. Disbursement of the established fees collected by the department for the land application of biosolids or industrial residuals shall be made to reimburse or partially reimburse those counties, cities and towns with duly adopted local ordinances that submit documentation of reimbursable expenses acceptable to the department as provided for in this regulation.
4. 5. Disbursement of the established fees collected by the department for the land application of biosolids shall be made to reimburse the Department of Conservation and Recreation's costs for implementation of the biosolids application program.

9VAC25-20-147. Records and reports.

A. Records. Permittees shall maintain complete records of the land application activities and amounts of Class B biosolids and exceptional quality biosolids cake, and industrial residuals that they land apply in the Commonwealth of Virginia. Such records shall be maintained by the permittee for five years after the date of the activity in a form that is available for inspection by the department. Records of land application activities shall include at minimum:

1. Name of permittee, DEQ permit number, and dates of activity.
2. Identification of land application site, including the DEQ control number.

3. The source of Class B biosolids, ~~whether the biosolids are Class B or~~ exceptional quality biosolids cake, or industrial residuals and the field area receiving those biosolids or industrial residuals.

4. The amount of Class B biosolids, exceptional quality biosolids cake, or industrial residuals applied in dry tons, ~~by class~~, and the method and calculations used to determine the reported value.

5. Name of responsible representative of permittee and a statement signed and dated by that representative indicating that the information submitted has been verified by that representative as correctly reported in accordance with this regulation.

B. Reports and notification. The permittee shall submit a monthly report by the 15th day of each month for land application activity that occurred in the previous calendar month, unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4. The report shall include (i) the recorded information listed in subsection A of this section and (ii) a calculation of the total fee. The submitted report shall include a summary list of the total amount of Class B biosolids ~~and~~ exceptional quality biosolids cake ~~applied~~, and industrial residuals land-applied and the calculated fee based on the land-applied Class B biosolids ~~and~~ exceptional quality biosolids cake, and industrial residuals for each county in which land application occurred. If no land application occurs under a permit during the calendar month, a report shall be submitted stating that no land application occurred.

9VAC25-20-148. Reimbursable local monitoring costs.

A. Reasonable expenses for the following types of activities may be submitted for reimbursement:

1. Charges for reviewing the permit to identify potential health and environmental protection issues upon notification by the permittee that operations will be initiated on permitted sites.
2. Charges and expenses, including local travel for site monitoring, inspections, collection and delivery of biosolids, industrial residuals, or soil samples to a nearby laboratory and examination of records.
3. Charges for recordkeeping.
4. Charges for complaint and incident response.
5. Charges for biosolids, industrial residuals, and soil sample testing costs.
6. Charges for the training of local monitors.

B. Charges for site monitoring not associated with determining compliance with state or federal law or regulation are ineligible for reimbursement.

9VAC25-20-149. Reimbursement of local monitoring costs.

A. Reimbursement of local monitoring costs deemed reasonable by the department will be made for costs up to

\$2.50 per dry ton of biosolids or industrial residuals land applied in a county during the period of time specified in the submitted invoice. Costs of up to \$4.00 per dry ton of biosolids or industrial residuals land applied in a county during the period of time that the costs were incurred may be reimbursed with prior approval from the department.

B. Application. A local government must submit a reimbursement application to request reimbursement from the department. All information shall be clearly typed or printed and all required or supporting documents must be attached. The county administrator or designated local biosolids monitor shall sign and date the application where indicated. The original signed application with one copy of each of the supporting documents shall be submitted to the department. Applications may not be submitted by facsimile or through electronic means. A reimbursement invoice form as described in this regulation must be completed before a reimbursement application can be submitted. The invoice form must include all expenses for which reimbursement is requested during the designated time period.

C. Application forms and submittal. The application for reimbursement must be submitted within 30 days of the last day of the month in which the reimbursable activity occurred. All applications received after this time frame will be ineligible for reimbursement. The following is a description of the application forms and an explanation of their use. The application forms and detailed instructions can be obtained from the department.

1. Form 1 - Reimbursement Application. An invoice form shall be submitted with each application for reimbursement. The invoice form shall list all reimbursable charges. To be reimbursed for eligible expenses, an applicant must provide documentation to demonstrate that the expenses were incurred. Invoices are acceptable proof of incurred expenses. Invoices signed by the local biosolids monitor or agent who performed or managed the monitoring activities shall be legible. All invoices are to include the following:

- a. DEQ permit number and site identification;
- b. DEQ control number for application fields;
- c. ~~Biosolids contractor's~~ Land applier's name;
- d. Date and type of activity monitored;
- e. Name of ~~biosolids~~ local monitor;
- f. Number of hours to be reimbursed and charge per hour;
- g. List of expenses for which reimbursement is sought; and
- h. Type of sampling activity performed and associated laboratory expense vouchers.

2. The application requires the county administrator to certify that the responsible official has read and understands the requirements for reimbursement and that

the application submitted is not fraudulent. The local monitor must attest to the accuracy and completeness of the information provided.

3. Form 2 - Multiple Owners Payment Assignment Form. When there are multiple local governments as claimants, a separate, signed and notarized invoice form for each claimant must be filled out and submitted with the application.

D. Processing applications.

1. If contacted by the department regarding an incomplete reimbursement application, an applicant will have 14 days from the date of the call or letter to submit the information requested and correct ~~any~~ deficiencies. Extensions of the 14-day deadline will not be granted. An application that does not contain all of the required information after the 14-day time frame may be rejected.

2. Only invoices pertaining to the monitoring activity claimed in the current application will be accepted. Costs omitted from previous claims are ineligible for reimbursement in subsequent claims. Invoices submitted in previous claims are not eligible documentation for reimbursement of costs in subsequent claims. To reduce the risk of disqualification of costs, costs for different monitoring activities should be invoiced separately. If possible, invoices should be structured so that costs are grouped according to task or activity.

E. Reconsideration process.

1. Claimants may submit a written response indicating why they believe costs denied on the reimbursement decision should be paid.

2. If the claimant disagrees with the decision in the reimbursement payment package, a notice of intent (NOI) to object and a reconsideration claim form must be submitted to the department within the filing deadlines specified in the reconsideration procedure package:

a. If filing deadlines are not met, the decision in the reimbursement payment package is final. This written objection shall be in the format specified in the reconsideration procedure package and explain the reasons for disagreement with the decisions in the reimbursement payment letter and supply any additional supporting documentation.

b. Upon receipt of this information and at the claimant's request, the department may schedule a reconsideration meeting to reevaluate the denied costs.

3. Claimants will be given an opportunity to contest the reimbursement decisions in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Within the filing deadline, the claimant must submit a written summary of the issues that will be contested using the reconsideration claim form.

4. The reconsideration procedures provide the department the opportunity to correct certain errors as follows:

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a. Failure of the reviewer to verify an invoice form that was received prior to completing the verification package for the reimbursement.

b. Errors the reviewer makes in verifying an invoice form.

c. Failure of the claimant to submit all invoices.

5. Errors ineligible for reconsideration. Notwithstanding the above, some types of errors cannot be corrected using the reconsideration process. It is the responsibility of the claimant or consultant, or both, to ensure that all application forms (invoice forms, and sampling and testing verification) are complete and accurate. The following types of errors may result in a denial of costs:

a. Items omitted from the invoice;

b. Unverified sampling and testing results;

c. Additions or revisions to the invoice forms submitted after the reviewer forwards the verification package to the department;

d. Using one invoice in multiple claims. Invoices submitted in an application cannot be used as documentation for reimbursement of costs in subsequent claims;

e. Failure to claim performed work on the invoice form;

f. Failure to claim sampling and testing costs as authorized; or

g. Failure to obtain prior approval from the department for costs that exceed \$2.50 per dry ton of biosolids or industrial residuals land applied.

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC § 1251 et seq.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal

under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123.

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic

sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- a. The type and number of animals that it stables or confines falls within any of the following ranges:
 - (1) 200 to 699 mature dairy cattle, whether milked or dry;
 - (2) 300 to 999 veal calves;
 - (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (4) 750 to 2,499 swine each weighing 55 pounds or more;

- (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;
- (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into surface waters of the state through a ~~manmade~~ man-made ditch, flushing system, or other similar ~~manmade~~ man-made device; or
- (2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

- 1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:
 - a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or
- 2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:
 - a. Closed ponds which discharge only during periods of excess run-off; or
 - b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

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Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100-4.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 pursuant to § 311 of the CWA.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial residual" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial user" or "user" means a source of indirect discharge.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water

Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to an AFO, land under the control of an AFO owner or operator; that is owned, rented, or leased to which manure, litter, or process wastewater from the production area may be applied.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback area, where biosolids may be applied.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Log sorting facilities" and "log storage facilities" mean facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the board.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished

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from odors normally associated with biosolids or sewage sludge.

~~"Manmade"~~ "Man-made" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, ~~manmade~~ man-made channels, or storm drains, (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA, that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and

4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
 - b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material ~~which that~~ is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board.

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Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A.

"Privately owned treatment works" or "PVOTW" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It

also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:

a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and

b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and

c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of

CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for biosolids use or sewage sludge disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

"State Water Control Law" or "Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm

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water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category 10);
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(i) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being

maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant

removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping,

power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§ 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants

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from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VPDES permit.

"Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works 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 wastewater works 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 wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-31-475. Local enforcement of biosolids regulations. (Repealed.)

~~A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids, the activity alleged to be in violation shall be halted pending a determination by the director.~~

~~B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.~~

~~C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land~~

~~application of biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia.~~

~~D. Local governments receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.~~

9VAC25-31-915. Local enforcement.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids or industrial residuals, the activity alleged to be in violation shall be halted pending a determination by the director.

B. Upon determination by the director that there has been a violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia; of any regulation promulgated under those sections; or of any permit or certificate issued for land application of industrial residuals, and that such violation poses an imminent threat to public health, safety, or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids or industrial residuals performed by persons employed by local governments and any violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia or of any permit or certificate issued for land application of industrial residuals discovered by local governments.

D. Local governments receiving complaints concerning land application of biosolids or industrial residuals shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-10. Definitions.

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land

and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. ~~BMP's~~ BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

"Concentrated confined animal feeding operation" means an animal feeding operation at which:

1. At least the following number and types of animals are confined:
 - a. 300 slaughter and feeder cattle;
 - b. 200 mature dairy cattle (whether milked or dry cows);
 - c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
 - d. 150 horses;
 - e. 3,000 sheep or lambs;
 - f. 16,500 turkeys;

g. 30,000 laying hens or broilers; or

h. 300 animal units; and

2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.

"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

"Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality, or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant.

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the board's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a

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VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge ~~or~~, biosolids, or industrial residuals after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Groundwater" means water below the land surface in the saturated zone.

"Industrial residuals" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of ~~either~~ treated wastewater, referred to as "effluent," ~~or~~ stabilized sewage

sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing ~~the crops and~~ or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback areas, where biosolids may be applied.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or

biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"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 or wastewater works 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 or wastewater works.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the board or the department.

"Person who prepares biosolids" means either the person ~~who~~ that generates biosolids during the treatment of domestic sewage in a treatment works or the person ~~who~~ that derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

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"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

~~"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with a local ordinance.~~

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean

Water Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as contained in documents submitted pursuant to ~~9VAC25-32-340~~ 9VAC25-32-60, but whose construction or

implementation will not substantially affect health considerations or performance.

"Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters of the United States under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing § 405 (d) of the CWA.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening,

stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment works" does not include biosolids use on privately owned agricultural land.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to 9VAC25-31-40 ~~et seq.~~, authorizing, under prescribed

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conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the board for applying for a VPA permit.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

9VAC25-32-285. Local enforcement.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids or industrial residuals, the activity alleged to be in violation shall be halted pending a determination by the director.

B. Upon determination by the director that there has been a violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia; of any regulation promulgated under those sections; or of any permit or certificate issued for land application of industrial residuals, and that such violation poses an imminent threat to public health, safety, or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids or industrial residuals performed by persons employed by local governments and any violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia or any permit or certificate issued for land application of industrial residuals discovered by local governments.

D. Local governments receiving complaints concerning land application of biosolids or industrial residuals shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-320. Local enforcement of the regulation. (Repealed.)

~~A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of biosolids, the activity alleged to be in violation shall be halted pending a determination by the director.~~

~~B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.~~

~~C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia.~~

~~D. Local governments receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.~~

V.A.R. Doc. No. R16-4408; Filed October 13, 2015, 1:49 p.m.

Final Regulation

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10, 9VAC25-32-140, 9VAC25-32-250; adding 9VAC25-32-255).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Effective Date: December 2, 2015.

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

Summary:

The amendments (i) add definitions for clarification or consistency with other regulations governing the pollutant management activities at animal feeding operations (AFOs); (ii) delete the term "concentrated animal feeding operations" and modify the term "confined animal feeding operations"; (iii) establish technical requirements for end-users of animal waste; (iv) specify that the technical requirements for end-users will address proper storage, appropriate land application practices, and recordkeeping; and (v) modify the public notice provisions for consistency with the Virginia Pollutant Discharge Elimination System (VPDES) Regulation governing AFOs.

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

Part I
General

9VAC25-32-10. Definitions.

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Animal feeding operation" means a lot or facility where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation [$\frac{1}{2}$] if they adjoin each other [$\frac{1}{2}$] or if they use a common area or system for the disposal of wastes.

"Animal waste" means liquid, [~~semi-solid~~ semisolid], and solid animal manure [~~poultry waste,~~] and process wastewater, compost, or sludges associated with [~~livestock~~

~~and poultry] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.~~

"Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or [the] environment.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. [~~BMP's~~ BMPs] include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and [9VAC25-32-356 ~~9VAC25-32-660~~], such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

~~"Concentrated confined animal feeding operation" means an animal feeding operation at which:~~

- ~~1. At least the following number and types of animals are confined:~~

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- a. ~~300 slaughter and feeder cattle;~~
- b. ~~200 mature dairy cattle (whether milked or dry cows);~~
- c. ~~750 swine each weighing over 25 kilograms (approximately 55 pounds);~~
- d. ~~150 horses;~~
- e. ~~3,000 sheep or lambs;~~
- f. ~~16,500 turkeys;~~
- g. ~~30,000 laying hens or broilers; or~~
- h. ~~300 animal units; and~~

~~2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.~~

~~"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met: for the purposes of this regulation, has the same meaning as an "animal feeding operation."~~

~~1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and~~

~~2. Crops, vegetation forage growth, or post harvest residues are not sustained over any portion of the operation of the lot or facility.~~

~~"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.~~

~~"Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.~~

~~"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.~~

~~"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.~~

~~"Department" means the Department of Environmental Quality.~~

~~"Director" means the Director of the Department of Environmental Quality, or an authorized representative.~~

~~"Discharge" means, when used without qualification, a discharge of a pollutant.~~

~~"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.~~

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the board's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department in consultation with the Department of Conservation and Recreation.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Groundwater" means water below the land surface in the saturated zone.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to biosolids, the distribution of either treated wastewater, referred to as "effluent," or stabilized sewage sludge, referred to as "biosolids," by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing the crops and vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback areas, where biosolids may be applied.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"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 or wastewater works 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 or wastewater works.

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"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the board or the department.

"Person who prepares biosolids" means either the person who generates biosolids during the treatment of domestic sewage in a treatment works or the person who derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly

from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" means any recipient of transferred poultry waste who stores or utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another and is not otherwise involved in the transfer or transaction of the waste nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping

and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with a local ordinance.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and

a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as contained in documents submitted pursuant to 9VAC25-32-340, but whose construction or implementation will not substantially affect health considerations or performance.

"Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use,

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degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters of the United States under this definition;
 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
 6. The territorial sea; and
 7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing § 405 (d) of the CWA.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment works" does not include biosolids use on privately owned agricultural land.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the

National Weather Service or appropriate regional or state rainfall probability information.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to 9VAC25-31 [~~10 et seq.~~], authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the board for applying for a VPA permit.

"Waste storage facility" means a (i) waste holding pond or tank used to store manure prior to land application [~~or~~] (ii) lagoon or treatment facility used to digest or reduce the solids or nutrients [, or (iii) structure used to store manure or waste].

"300 animal units" means 300,000 pounds of live animal weight or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;

- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

Part III
Public Involvement

9VAC25-32-140. Public notice of VPA permit action and public comment period.

A. Draft VPA permits.

1. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity except for animal feeding operations as defined in 9VAC25-32-10, when the modifications are to the nutrient management plan.
2. Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.
3. The contents of the public notice of an application for a VPA permit shall include:
 - a. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;
 - b. A brief description of the business or activity conducted at the facility;
 - c. A statement of the tentative determination to issue or deny a VPA permit;
 - d. A brief description of the final determination procedure;

- e. The address and phone number of a specific person at the state office from whom further information may be obtained; and
- f. A brief description of how to submit comments and request a hearing.

B. VPA permit application.

1. Upon receipt of an application for the issuance of a new or modified permit, the department shall notify in writing the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

- a. The name of the applicant;
- b. The nature of the application and proposed pollutant management activity;
- c. The availability and timing of any comment period; and
- d. Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9VAC25-32-150.

2. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized in the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven nor more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

3. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

4. Public notice shall not be required for submission or approval of plans and specifications or conceptual

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engineering reports not required to be submitted as part of the application.

C. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

D. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

9VAC25-32-250. ~~Confined—animal~~ Animal feeding operations.

A. All ~~confined~~ animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. ~~Concentrated—confined—animal~~ Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more ~~confined~~ animal feeding operations under common ownership are considered, ~~for the purposes of this regulation, to be~~ a single

~~confined~~ animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. ~~Case-by-case designation of concentrated—confined animal feeding operations~~ determination.

1. The board may ~~designate~~ determine that any ~~confined~~ animal feeding operation ~~which that~~ does not fall under the definition of concentrated—confined—animal feeding operation as defined in 9VAC25-20-10 otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit upon determining that it is a potential or actual contributor of pollution to state waters. In making this ~~designation~~ determination the following factors shall be considered:

- a. The size of the operation;
- b. The location of the operation relative to state waters;
- c. The means of conveyance of animal wastes and process waters into state waters;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
- e. The compliance history and the ability to make corrections in order to comply with the VPA general permit conditions;
- ~~e. f.~~ f. The means of storage, treatment, or disposal of animal wastes; and
- ~~f. g.~~ g. Other relevant factors.

2. A VPA permit application shall not be required for a ~~concentrated—confined~~ an animal feeding operation ~~designated under~~ subject to subdivision 1 of this subsection until the board has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

9VAC25-32-255. Requirements for end-users of animal waste and poultry waste.

A. Technical requirements for end-users of animal waste or poultry waste will be established in general permit regulations or individual permits. Technical requirements for end-users of animal waste or poultry waste shall address but not be limited to the following:

1. Proper waste storage;
2. Appropriate land application practices; and
3. Recordkeeping.

B. End-users of animal waste or poultry waste shall comply with technical requirements established as set forth by subsection A of this section.

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 (9VAC25-32)

[Virginia Pollution Abatement Permit Application, General Instructions \(rev. 5/2014\)](#)

[Virginia Pollution Abatement Permit Application, Form A, All Applicants \(rev. 6/2014\)](#)

~~[Virginia Pollution Abatement Permit Application, Form B, Animal Waste \(rev. 10/1995\)](#)~~

[Virginia Pollution Abatement \(VPA\) Permit Application, Form B, Animal Feeding Operations \(AFOs\) \(rev. 2/2013\)](#)

[Virginia Pollution Abatement Permit Application, Form C, Industrial Waste \(rev. 10/1995\)](#)

[Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page \(rev. 6/2013\):](#)

[Part D-I: Land Application of Municipal Effluent \(rev. 4/2009\)](#)

[Part D-II: Land Application of Biosolids \(rev. 10/2013\)](#)

[Part D-III: Effluent Characterization Form \(rev. 4/2009\)](#)

[Part D-IV: Biosolids Characterization Form \(rev. 6/2013\)](#)

[Part D-V: Non-Hazardous Waste Declaration \(rev. 6/2013\)](#)

[Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals \(rev. 9/2012\)](#)

[Application for Land Application Supervisor Certification \(rev. 2/2011\)](#)

[Application for Renewal of Land Application Supervisor Certification \(rev. 2/2011\)](#)

[Request for Extended Setback from Biosolids Land Application Field \(8/2015\)](#)

[Sludge Disposal Site Dedication Form, Form A-1 \(rev. 11/2009\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement \(rev. 10/2013\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance \(rev. 10/2013\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter \(rev. 11/2009\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee \(rev. 11/2009\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit \(rev. 11/2009\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement \(rev. 11/2009\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test \(rev. 10/2013\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee \(rev. 10/2013\)](#)

VA.R. Doc. No. R12-3345; Filed October 6, 2015, 1:03 p.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. 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 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.

Title of Regulation: 9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

FORMS (9VAC25-91)

~~[Registration for Facility and Aboveground Storage Tank \(AST\), DEQ Form 7540-AST \(rev. 7/13\)](#)~~

[Registration for Facility and Aboveground Storage Tank \(AST\), DEQ Form 7540-AST \(rev. 11/2015\)](#)

[Approval Application for Facility Oil Discharge Contingency Plan \(rev. 8/07\)](#)

[Renewal Application for Facility Oil Discharge Contingency Plan \(rev. 8/07\)](#)

VA.R. Doc. No. R16-4504; Filed October 14, 2015, 8:38 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical

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advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50; adding 9VAC25-115-15).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: July 24, 2016.

Agency Contact: Eleanore Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, TTY (804) 698-4021, or email elleanore.daub@deq.virginia.gov.

Summary:

The regulatory action amends and reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit, which expires on July 23, 2016, for another five-year term. The general permit contains limitations and monitoring requirements for point source discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The general permit is reissued to continue making it available after July 23, 2016.

The amendments update and clarify definitions, effective dates, authorization and registration statement requirements, stormwater pollution prevention plans, and certain conditions applicable to all permits, general permit limits, and general permit special conditions.

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

9VAC25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Industrial activity" means the facilities classified under SIC Code 2091 or 2092.

"Seafood processing facility" means any facility classified under SIC Code 2091, 2092, 5142, or 5146, which processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility. Seafood includes but

is not limited to crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with ~~storm-water~~ stormwater discharges.

~~"Storm-water" means storm-water runoff, snow melt runoff, and surface runoff and drainage.~~

~~"Storm-water~~ Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying ~~storm-water~~ stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31-10 et seq. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, ~~storm-water~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to ~~storm-water~~ stormwater. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with ~~storm-water~~ stormwater drained from the above described areas.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, [2014 2015].

9VAC25-115-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and storm water stormwater associated with industrial activity from seafood processing facilities classified as SIC Code 2091 and 2092.

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, 2014 July 24, 2016, and will expire on July 23, 2016 July 23, 2021. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30.

9VAC25-115-30. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process wastewater and stormwater as described in 9VAC25-115-20 A to surface waters of the Commonwealth of Virginia provided that ~~the owner files a registration statement in accordance with 9VAC25-115-40 that is accepted by the board, submits the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-115-50, and provided that the owner has not been notified by the board that authorization is denied in accordance with subsection B of this section.;~~

1. The owner files a registration statement, in accordance with 9VAC25-115-40, and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-115-50; and
4. The owner has not been notified by the board that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

B. The board will notify an owner ~~of denial of authorization that the discharge is not eligible for coverage under this permit~~ in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year;
4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or
5. ~~A TMDL (board adopted and EPA approved or EPA imposed) contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA. The discharge is not consistent with the assumptions and requirements of an approved TMDL.~~

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act, §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) and the State Water Control Law, ~~and applicable regulations under either~~, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the seafood processing facilities general permit issued in ~~2006 2011~~, and who submits a complete registration statement on or before July 23, 2014 July 23, 2016, is authorized to continue to discharge under the terms of the ~~2006 2011~~ general permit until such time as the board either:
 - a. Issues coverage to the owner under this general permit; or
 - b. Notifies the owner that the discharge is not eligible for coverage under this general permit is denied.
2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:
 - a. Initiate enforcement action based upon the 2011 general permit ~~that has been continued~~;
 - b. Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the activities discharges authorized by coverage under the 2011 continued general permit or be subject to

Regulations

enforcement action for ~~operating~~ discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES ~~permit~~ Permit Regulation (9VAC25-31).

9VAC25-115-40. Registration statement.

A. Deadlines for submitting registration statement. ~~The~~ Any owner seeking coverage under this general permit shall submit a complete general VPDES permit registration statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the general VPDES permit for seafood processors processing facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the board at least 30 days prior to the date planned for ~~commencing operation~~ commencement of the ~~treatment—works~~ discharge.

2. Existing facilities.

a. Any owner of an existing seafood processing facility covered by an individual VPDES permit ~~who~~ that is proposing to be covered by this general permit shall submit a complete registration statement at least ~~240~~ 240 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the general VPDES permit for seafood processing facilities that became effective on ~~July 24, 2006~~ July 24, 2011, and ~~who~~ that intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~prior to June 24, 2014~~ on or before June 24, 2016.

c. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained shall submit an amended registration statement to the board at least 30 days prior to commencing operation of the new process.

3. Late registration statements. Registration statements for existing facilities covered under subdivision 2 b of this subsection will be accepted after July 23, 2016 but authorization to discharge will not be retroactive. Owners described in subdivision 2 b of this subsection that submit registration statements after June 24, 2016, are authorized to discharge under the provisions of 9VAC25-115-30 D if a complete registration statement is submitted before July 24, 2016.

B. The registration statement shall contain the following information:

1. Facility name, owner name, mailing address, email address (where available), and telephone number;

2. Facility street address (if different from mailing address);

3. Facility operator name, mailing address, email address, and telephone number if different than owner;

4. Does the facility discharge to surface waters? Name of receiving stream or streams if yes and, if no, describe the discharge or discharges;

5. Does the facility have a current VPDES Permit? Permit Number Include the permit number if yes;

6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;

7. A USGS U.S. Geological Survey (USGS) 7.5 minute topographic map or other equivalent computer generated map showing with sufficient resolution to clearly show the facility location, the discharge location or locations, and the receiving water body;

8. Facility SIC ~~Code(s)~~ code or codes;

9. Nature of business at the facility;

10. Discharge outfall information including seafood process, receiving stream, discharge flow, and days per year of discharge for each outfall;

11. Facility maximum production information;

12. Facility line (water balance) drawing;

13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;

14. Treatment and solid waste disposal information;

15. Information on use of chemicals at the facility; and

16. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The registration statement shall be signed in accordance with 9VAC25-31-110 of the VPDES Permit Regulation.

C. The registration statement may be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the seafood processing facility is located.

9VAC25-115-50. General permit.

Any owner whose registration statement is accepted by the ~~director will receive the following permit and~~ board shall comply with the requirements ~~therein of the general permit~~ and be subject to all requirements of ~~the VPDES Permit Regulation, 9VAC25-34 9VAC25-31-170 of the VPDES Permit Regulation.~~

General Permit No.: VAG52
 Effective Date: ~~July 24, 2011~~ July 24, 2016
 Expiration Date: ~~July 23, 2016~~ July 23, 2021

GENERAL PERMIT FOR SEAFOOD PROCESSING ~~FACILITY~~ FACILITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations and Monitoring Requirements, ~~Part II-Storm Water~~ Part II-Stormwater Pollution Prevention Plans, and Part III-Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this general permit.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ — SEAFOOD REQUIREMENTS

1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

±. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ CONVENTIONAL REQUIREMENTS

2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 LBS POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ CONVENTIONAL REQUIREMENTS

3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.15	0.30	NA	1/3 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite

Regulations

Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ MECHANIZED REQUIREMENTS

4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

~~4.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ MECHANIZED REQUIREMENTS

5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

~~5.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ REQUIREMENTS—NONBREADED

6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

[~~6.~~] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ NON-BREADED REQUIREMENTS

7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

~~7.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from ~~nonbreaded~~ non-breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	25	63	NA	1/3 Months	Composite
TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ BREADED REQUIREMENTS

8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 ~~LBS~~ POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

~~8.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ BREADED REQUIREMENTS

9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

~~9.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~—TUNA REQUIREMENTS

10. TUNA PROCESSING—ALL EXISTING SOURCES

~~10.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~—TUNA REQUIREMENTS

11. TUNA PROCESSING—ALL NEW SOURCES

~~11.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite

Regulations

Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ CONVENTIONAL REQUIREMENTS

12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 ~~LBS~~ POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

~~12.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ CONVENTIONAL REQUIREMENTS

13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

~~13.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—~~MECHANIZED~~ MECHANIZED REQUIREMENTS

14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

~~14.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Regulations

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~—MECHANIZED REQUIREMENTS

15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

~~15.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~—HAND-SHUCKED REQUIREMENTS

16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES WHICH ~~PROCESS~~ PROCESSING MORE THAN 4,000 LBS POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

~~16.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS — ~~HAND SHUCKED~~ REQUIREMENTS

17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

~~17.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—~~HAND-SHUCKED~~ REQUIREMENTS

18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES WHICH PROCESS PROCESSING MORE THAN 1,000 LBS POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

~~18.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Raw material = The weight of oyster meat after shucking.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—~~HAND-SHUCKED~~ REQUIREMENTS

19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

~~19.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ REQUIREMENTS—~~STEAMED~~ STEAMED REQUIREMENTS

20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

~~20.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ REQUIREMENTS—~~STEAMED~~ STEAMED REQUIREMENTS

21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

~~21.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—~~SCALLOP~~ SCALLOP REQUIREMENTS

22. SCALLOP PROCESSING—ALL EXISTING SOURCES

~~22.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ REQUIREMENTS—SCALLOP REQUIREMENTS

23. SCALLOP PROCESSING—ALL NEW SOURCES

~~23.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS~~ REQUIREMENTS—FARM RAISED REQUIREMENTS

24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES WHICH PROCESS PROCESSING MORE THAN 3,000 LBS POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

~~24.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

Regulations

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS—FARM RAISED~~ REQUIREMENTS

25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

~~25.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.3	4.6	NA	1/3 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING ~~REQUIREMENTS—HERRING~~ REQUIREMENTS

26. HERRING PROCESSING—ALL [EXISTING SOURCES]

~~26.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS ~~REQUIREMENTS~~ HERRING REQUIREMENTS

27. HERRING PROCESSING—ALL NEW SOURCES

~~27.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No ~~Limitation~~ limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

~~Production~~—see Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

B. Special conditions SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.
2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.
3. Wastewater should be reused or recycled to the maximum extent practicable.
4. The permittee shall comply with the following solids management plan:
 - a. There shall be no discharge of floating solids or visible foam in other than trace amounts.
 - b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.
 - c. All settling basins shall be cleaned frequently in order to achieve effective settling.
 - d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam or scallop shells, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.
 - e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.
 - f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.
5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).
6. The permittee shall notify the department as soon as they know or have reason to believe:
 - a. That any activity has occurred or will occur that would result in the discharge on a routine or frequent basis of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
 - (1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
 - (4) The level established by the board.
- b. That any activity has occurred or will occur that would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant that is not limited in the permit if that discharge will exceed the highest of the following notification levels:
- (1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
 - (4) The level established by the board.
7. Compliance reporting and recordkeeping under Part I A.

- a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD	2.0 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

- b. Recording results. Any concentration below the QL used in the analysis shall be recorded as <"QL" "<QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this ~~subdivision~~ subsection). Otherwise the numerical value shall be recorded.
 - c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., 5 five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.
8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.
9. If a new process is added after coverage under the general permit is obtained, an amended registration

statement must be submitted at least 30 days prior to commencing operation of the new process.

10. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit or an alternative VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in accordance with the general permit,

and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

C. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II

~~Storm-Water~~ Stormwater Pollution Prevention Plans

A ~~storm-water~~ stormwater pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit, which has ~~storm-water~~ stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092.

The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of ~~storm-water~~ stormwater discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in ~~storm-water~~ stormwater discharges from the facility [;] and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of this section. If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, ~~4VAC50-30~~ 9VAC25-840. All plans incorporated by reference into the SWPPP become enforceable under this permit.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~2006~~ 2011 Seafood Processing Facilities General Permit. Owners of facilities that were covered under the ~~2006~~ 2011 Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than December 30, 2014~~ required by this part within 60 days of the board granting coverage under this permit.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring

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individual permit, and existing facilities not currently covered by a VPDES permit ~~who~~ that elect to be covered under this general permit must prepare and implement the SWPPP ~~prior to submitting the registration statement within 60 days of the board granting coverage under this permit.~~

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the transfer of title of the facility.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for ~~the~~ preparation of and compliance with the SWPPP.

B. Contents of the ~~plan~~ SWPPP. The ~~plan~~ SWPPP shall include, at a minimum, the following items:

1. Pollution prevention team. The ~~plan~~ SWPPP shall identify the staff individuals by name or title ~~that~~ who comprise the facility's ~~storm-water~~ stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and maintaining compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. Activities at the facility. A description of the nature of the industrial activities at the facility.

b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site map identifying the following:

(1) The size of the property (in acres);

(2) The location and extent of significant structures and impervious surfaces (roofs, paved areas, and any other impervious areas);

(3) Locations of all ~~storm-water~~ stormwater conveyances including ditches, pipes, swales, and inlets, and the directions of ~~storm-water~~ stormwater flow (e.g., use arrows to show which ways ~~storm-water~~ stormwater will flow);

(4) Locations of all existing structural and source control BMPs;

(5) Locations of all surface water bodies, including wetlands;

(6) Locations of identified potential pollutant sources;

(7) Locations where significant spills or leaks have occurred;

(8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance ~~and/or~~ or cleaning areas; ~~loading/unloading~~ loading or unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;

(9) Locations of ~~storm-water~~ stormwater outfalls and an approximate outline of the area draining to each outfall, and location of municipal separate storm sewer systems (MS4s), if the ~~storm-water~~ stormwater from the facility discharges to them;

(10) Location and description of all ~~nonstorm-water~~ nonstormwater discharges;

(11) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and

(12) Location and source of runoff to the site from adjacent property, where the runoff contains significant quantities of pollutants. ~~The permittee shall include an evaluation with the SWPPP of how the quality of the storm-water running onto the facility impacts the facility's storm-water discharges.~~

d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams, ~~dry sloughs, and arroyos.~~ Provide a Δ description of wetland sites that may receive discharges from the facility shall also be provided. If the facility discharges through an MS4, ~~identify~~ the MS4 operator and the receiving water to which the MS4 discharges shall also be identified.

3. Summary of potential pollutant sources. The ~~plan~~ SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to ~~storm-water~~ stormwater. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include, but are not limited to, the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:

a. Activities in area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams);

b. Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been

exposed to ~~storm water~~ stormwater in the three years prior to the date ~~this SWPP~~ the SWPPP was prepared or amended. The list shall include any hazardous substance or oil at the facility.

4. Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to ~~storm water~~ stormwater discharges can occur and their corresponding outfalls. The ~~plan~~ SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a ~~storm water~~ stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities, ~~and may also include releases of oil or hazardous substances that are not in excess of reporting requirements.~~

~~5. Sampling data. The plan shall include a summary of existing discharge sampling data taken at the facility, and shall also include a summary of sampling data collected during the term of this permit.~~

6. ~~Storm water~~ 5. Stormwater controls.

a. BMPs shall be implemented for all the areas identified in Part II B 3 (Summary of potential pollutant sources) to prevent or control pollutants in ~~storm water~~ stormwater discharges from the facility. ~~All reasonable~~ If applicable, steps shall be taken to control or address the quality of discharges from the site that ~~may do~~ may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to ~~storm water~~ stormwater. Selection of BMPs shall take into consideration:

- (1) That preventing ~~storm water~~ stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from ~~storm water~~ stormwater;
- (2) BMPs generally ~~shall~~ must be used in combination with each other for most effective water quality protection;
- (3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;
- (4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid ~~ground water~~ groundwater contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from ~~storm water~~ stormwater runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. Control measures. The permittee shall implement the following types of BMPs to prevent and control pollutants in the ~~storm water~~ stormwater discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt).

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to ~~storm water~~ stormwater discharges. Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The ~~plan~~ SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and of the conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized ~~to the maximum extent practicable~~. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized ~~to the maximum extent practicable~~.

(2) Eliminating and minimizing exposure. To the [maximum] extent practicable, industrial materials and activities shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff.

(3) Preventive maintenance. The permittee shall have a preventive maintenance program that includes regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, ~~spill~~ spills, and other releases. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs) of the permit.

(4) Spill prevention and response procedures. The ~~plan~~ SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks.

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

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(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 [~~(2005)~~] and 40 CFR Part 265 [~~(2005)~~]. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. ~~If possible, one~~ One of these individuals shall be a member of the pollution prevention team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP; and maintained in other locations where it will be readily available.

(5) Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact ~~storm-water~~ stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to ~~storm-water~~ stormwater. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the ~~plan~~ SWPPP and be based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(6) Employee training. The permittee shall implement a ~~storm-water~~ stormwater employee training program for the facility. The SWPPP shall include a schedule for all ~~types of necessary~~ training; and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to ~~storm-water~~ stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors; and maintenance personnel; ~~etc.~~). The training shall cover the components and goals of the SWPPP; and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance,

etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The ~~plan~~ SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, ~~and/or~~ or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The plan shall describe the ~~storm-water~~ stormwater runoff management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in ~~storm-water~~ stormwater discharges from the site.

Structural BMPs may require a separate permit under § 404 of the ~~CWA~~ federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

C. Maintenance. All BMPs identified in the SWPPP shall be maintained in effective operating condition. ~~Storm-water~~ Stormwater BMPs identified in the SWPPP shall be observed during active operation (i.e., during a ~~storm-water~~ stormwater runoff event) to ensure that they are functioning correctly. ~~Where discharge locations are inaccessible, nearby downstream locations shall be observed.~~ The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs; and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained ~~by appropriate means~~ (e.g., spill response supplies available and personnel trained; ~~etc.~~).

If site inspections required by Part II B ~~6 5~~ b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. ~~If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable.~~ In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

D. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact ~~storm water~~ stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.

1. Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to ~~storm water~~ stormwater, as identified in Part II B 3. The personnel shall evaluate:

- a. Industrial materials, residue or trash that may have or could come into contact with ~~storm water~~ stormwater;
- b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;
- c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;
- d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;
- e. Evidence of, or the potential for, pollutants entering the drainage system;
- f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;
- g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and
- h. ~~Results~~ Review of the results of both visual and any analytical monitoring done during the past year ~~shall be taken into consideration during the evaluation.~~

2. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part II B 2 c; revise the description of controls required by Part II B 6 5 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department.

3. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, the name or names of personnel making the evaluation, the date or dates of the evaluation, and all observations relating to the implementation of the SWPPP, including elements

stipulated in Part II D 1 (a) through (f) of this general permit. Observations shall include such things as: the location or locations of discharges of pollutants from the site; the location or locations of previously unidentified sources of pollutants; the location or locations of BMPs that need to be maintained or repaired; the location or locations of failed BMPs that need replacement; and location or locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP.

4. Where compliance evaluation schedules overlap with routine inspections required under Part II B 6 5 b (5), the annual compliance evaluation may be used as one of the routine inspections.

E. Signature and plan review.

1. Signature/location. The SWPPP shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

2. Availability. The permittee shall make the SWPPP, annual site compliance evaluation report, and other information available to the department upon request.

3. Required modifications. The director may notify the permittee at any time that the SWPPP, BMPs, or other components of the facility's ~~storm water~~ stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met, and may include required modifications to the ~~storm water~~ stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

F. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP ~~as appropriate~~ whenever:

- a. There is construction or a change in design, operation, or maintenance at the facility that has ~~a significant~~ an effect on the discharge, or the potential for the discharge, of pollutants from the facility sufficient to impact water quality;
- b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

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- c. Inspections by local, state, or federal officials determine that modifications are necessary;
- d. There is a spill, leak or other release at the facility; or
- e. There is an unauthorized discharge from the facility.

2. SWPPP modifications shall be made within 30 calendar days after the discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

G. Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:

- 1. Discharges from fire-fighting activities;
- 2. Fire hydrant flushings;
- 3. Potable water including water line flushings;
- 4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- 5. Irrigation drainage;
- 6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;
- 7. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed;
- 8. Routine external building wash down that does not use detergents;
- 9. Uncontaminated groundwater or spring water;
- 10. Foundation or footing drains where flows are not contaminated with process materials; and
- 11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower, for example, "piped" cooling tower blowdown or drains.

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) and time(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

~~2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the~~ The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the

U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see NOTE in Part III I) the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within 5 five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the

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oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in ~~Parts~~ Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone ~~or by fax, FAX, or online at~~ <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>.

For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity ~~which that~~ which that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions ~~which that~~ that govern the operation of the regulated facility, including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, ~~etc~~ and other requested information. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under ~~Parts~~ Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

~~The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the federal Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the federal Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.~~

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state or local laws or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on ~~"bypass"~~ ~~(Part in Part III U), U (Bypass)~~ and ~~"upset"~~ ~~(Part Part III V) V (Upset)~~ nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~which that~~ are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit ~~which that~~ has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of ~~Parts~~ Part III U 2 and U 3.

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2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~which that~~ occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee ~~who that~~ wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits. ~~4. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the federal Clean Water Act. 2. As an alternative to transfers under Part III Y 1, Coverage under this permit may be automatically transferred to a new permittee if:~~

~~a. 1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the board;~~

~~b. 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and~~

~~c. 3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.~~

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

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.

the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

FORMS (9VAC25-115)

- ~~VPDES Change of Ownership Agreement Form (undated).~~
- [Change of Ownership Agreement Form \(rev. 3/2014\)](#)
- [Department of Environmental Quality Water Division Permit Application Fee Form \(rev. 10/2014\)](#)

VA.R. Doc. No. R14-4092; Filed October 13, 2015, 4:38 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60).**

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

Effective Date: December 2, 2015.

Agency Contact: Elizabeth McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email elizabeth.mckercher@deq.virginia.gov.

Summary:

The amendments add nine total maximum daily load wasteload allocations (WLAs) for the Potomac-Shenandoah River Basin and three WLAs for the James River Basin.

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 200 in the TMDL table in subsection A of 9VAC25-720-50 are not amended; therefore, the text of those rows is not set out.							
201.	Crooked Run	<u>Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, Stephens Run, Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed</u>	Frederick, Warren	B56R	E. coli	2.22E+12	cfu/year

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<u>202.</u>	<u>Borden Marsh Run</u>	<u>Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, Stephens Run, Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed</u>	<u>Clarke, Warren</u>	<u>B55R</u>	<u>E.coli</u>	<u>2.81E+11</u>	<u>cfu/year</u>
<u>203.</u>	<u>Willow Brook</u>	<u>Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, Stephens Run, Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed</u>	<u>Warren</u>	<u>B55R</u>	<u>E. coli</u>	<u>2.33E+11</u>	<u>cfu/year</u>
<u>204.</u>	<u>West Run</u>	<u>Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, Stephens Run, Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed</u>	<u>Frederick, Warren</u>	<u>B56R</u>	<u>E. coli</u>	<u>5.80E+11</u>	<u>cfu/year</u>
<u>205.</u>	<u>Long Branch</u>	<u>Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, Stephens Run, Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed</u>	<u>Clarke</u>	<u>B57R</u>	<u>E. coli</u>	<u>1.73E+11</u>	<u>cfu/year</u>

206.	<u>Stephens Run</u>	Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, <u>Stephens Run</u> , Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed	<u>Frederick</u>	<u>B56R</u>	<u>E. coli</u>	<u>3.07E+11</u>	<u>cfu/year</u>
207.	<u>Manassas Run</u>	Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, <u>Stephens Run</u> , Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed	<u>Warren</u>	<u>B55R</u>	<u>E. coli</u>	<u>3.24E+11</u>	<u>cfu/year</u>
208.	<u>Happy Creek</u>	Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, <u>Stephens Run</u> , Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed	<u>Warren</u>	<u>B41R</u>	<u>E. coli</u>	<u>4.27E+11</u>	<u>cfu/year</u>
209.	<u>Happy Creek</u>	Bacteria TMDL Development for Crooked Run, Borden Marsh Run, Willow Brook, West Run, Long Branch, <u>Stephens Run</u> , Manassas Run, and Happy Creek Watersheds, and Sediment TMDL Development for Happy Creek Watershed	<u>Warren</u>	<u>B41R</u>	<u>Sediment</u>	<u>29.05</u>	<u>tons/year</u>

Regulations

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²There were no point source dischargers in the modeled TMDL area.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-50 are not amended; therefore, the text of those subsections is not set out.

9VAC25-720-60. James River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBI D	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 141 in the TMDL table in subsection A of 9VAC25-720-60 are not amended; therefore, the text of those rows is not set out.							
<u>142.</u>	<u>Turkey Island Creek</u>	<u>Bacteria TMDL Development for the Turkey Island Creek and James River Westover to Claremont Watershed</u>	<u>Henrico, Charles City</u>	<u>G02R</u>	<u>E. coli</u>	<u>4.31E+11</u>	<u>cfu/year</u>
<u>143.</u>	<u>James River from Westover to Chippokes Point</u>	<u>Bacteria TMDL Development for the Turkey Island Creek and James River Westover to Claremont Watershed</u>	<u>Charles City, Prince George</u>	<u>G02R, G04R</u>	<u>E. coli</u>	<u>4.25E+13</u>	<u>cfu/year</u>
<u>144.</u>	<u>James River from Chippokes Point to Claremont</u>	<u>Bacteria TMDL Development for the Turkey Island Creek and James River Westover to Claremont Watershed</u>	<u>Prince George, Surry</u>	<u>G04E, G04R</u>	<u>E. coli</u>	<u>4.99E+13</u>	<u>cfu/year</u>

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²GS means growing season.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-60 are not amended; therefore, the text of those sections is not set out.

VA.R. Doc. No. R16-4502; Filed October 13, 2015, 2:03 p.m.



TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

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: 10VAC5-110. Credit Counseling (amending 10VAC5-110-10, 10VAC5-110-20, 10VAC5-110-30; adding 10VAC5-110-40 through 10VAC5-110-70).

Statutory Authority: §§ 6.2-2013 and 12.1-13 of the Code of Virginia.

Effective Date: December 1, 2015.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The amendments (i) define various terms including "advertisement," "business day," and "total amount disbursed"; (ii) clarify that the Bureau of Financial Institutions will retain licensees' surety bonds notwithstanding the occurrence of certain events; (iii) prescribe the amount of coverage required by subdivision A 7 of § 6.2-2005 of the Code of Virginia and specify additional events that require licensees to file a written report with the Commissioner of Financial Institutions; (iv) prohibit a licensee from providing debt management plan services in connection with a debt management plan that has been set up by a person other than a credit counselor employed by the licensee; (v) clarify that money received by a licensee for distribution to consumers' creditors is held in trust for the benefit of consumers and cannot be commingled with the licensee's operating funds or the funds of any other person; (vi) prohibit a licensee from selling or assigning a debt management plan to another person unless the purchaser or assignee also is a licensee and require licensees to provide consumers with a written notice containing the bureau's contact information; (vii) prohibit licensees from providing information to the bureau or to consumers that is false, misleading, or deceptive; (viii) prescribe the application fee for any person submitting an application under § 6.2-2007 of the Code of Virginia to acquire 25% or more of the ownership of a licensee and clarify the requirements applicable to the disclosures specified in subdivision A 9 of § 6.2-2005 of

the Code of Virginia; (ix) condition the authority of licensees to delegate any of their debt pooling and distribution responsibilities to third parties and require licensees to disclose certain information in their advertisements; and (x) include various technical and clarifying changes.

AT RICHMOND,
COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. BFI-2015-00039

Ex Parte: In re: amendments to credit counseling regulations

ORDER ADOPTING REGULATIONS

On July 17, 2015, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's regulations governing licensed credit counseling agencies ("licensees"), which are set forth in Chapter 110 of Title 10 of the Virginia Administrative Code, 10 VAC 5-110-10 et seq. The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on August 10, 2015, posted on the Commission's website, and sent to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before September 4, 2015.

Comments on the proposed regulations were filed by Jean L. Law on behalf of Money Management International, Inc. The Commission did not receive any requests for a hearing. Ms. Law suggested that the proposed definition of "advertisement" be modified to exclude social media unless the social media interaction is primarily about debt management plans as opposed to general education and information. Ms. Law expressed concern that without this exclusion, two of the proposed disclosure requirements applicable to advertisements could become unmanageable and burdensome.

The Bureau considered Ms. Law's comments and responded to them in its Statements of Position, which the Bureau filed with the Clerk of the Commission on September 29, 2015. In its response, the Bureau maintained that social media would constitute a form of advertisement when it directly or indirectly promotes the offering of a debt management plan to any consumer. The Bureau contended that the exception suggested by Ms. Law is overly broad, but indicated that it does not object to clarifying the proposed definition of "advertisement" as it pertains to social media. Accordingly, the Bureau stated that it is amenable to adding the following sentence at the end of the proposed definition: "The term also excludes social media interactions that are solely educational and informational in purpose and do not promote debt management plans."

Regulations

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the Bureau's Statements of Position, the record herein, and applicable law, concludes that the proposed regulations should be modified to incorporate the Bureau's suggested addition to the definition of "advertisement." The Commission further concludes that the proposed regulations, as modified, should be adopted with an effective date of December 1, 2015.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as modified herein and attached hereto, are adopted effective December 1, 2015.
- (2) This Order and the attached regulations shall be posted on the Commission's website at: <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed, and the papers herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the attached regulations, to all licensed credit counseling agencies and such other interested parties as he may designate.

10VAC5-110-10. Definitions.

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

"Bureau" means the Bureau of Financial Institutions.

"Commissioner" means the Commissioner of Financial Institutions.

"Advertisement" for purposes of Chapter 20 and this chapter means a commercial message in any medium that promotes, directly or indirectly, the offering of a debt management plan to any consumer. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as other information distributed or made available solely to other businesses. [The term also excludes social media interactions that are solely educational and informational in purpose and do not promote debt management plans.]

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Business day" for purposes of Chapter 20 means a day on which the licensee's office is open for business.

"Chapter 20" means Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 of the Code of Virginia.

"Debt Consumer," "credit counselor," "debt management plan," "debt pooling and distribution service," and "licensee" shall have the meanings ascribed to them in § 6.2-2000 of the Code of Virginia.

"Reporting period" means the first six months of a calendar year or the last six months of a calendar year, as the case may be.

"Total amount disbursed" for purposes of § 6.2-2015 of the Code of Virginia means funds sent to creditors on a monthly basis on behalf of a consumer.

10VAC5-110-20. Surety bond standards; reporting requirements.

A. Every licensee shall be bonded in a principal amount determined by the commissioner. The bond amount shall be equal to the licensee's average monthly volume of funds received from Virginia consumers under debt management plans during the preceding reporting period, rounded to the next highest multiple of \$10,000, but not exceeding \$350,000.

B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly volume of funds received under debt management plans, experience, and other factors deemed pertinent by the commissioner.

C. The minimum bond required shall be \$25,000.

D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be filed with the bureau prior to issuance of a license and shall be maintained continuously thereafter.

E. When a licensee files a bond with the bureau, as required by § 6.2-2003 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked;
2. The licensee ceases offering debt management plans or providing debt pooling and distribution services; or
3. The licensee has distributed all consumers' funds to their creditors in accordance with their debt management plans.

F. A licensee shall maintain the coverage required by subdivision A 7 of § 6.2-2005 of the Code of Virginia in the amount of at least \$250,000.

~~E. G.~~ Licensees shall file a written report with the bureau within 45 days after the end of each reporting period. The report shall contain information regarding the volume of funds received from Virginia consumers under debt management plans and such other information as the commissioner may require concerning the licensee's business and operations. The commissioner may require additional reports as he deems necessary.

F. H. If the legal name of a licensee is changed, the licensee shall file with the bureau within 15 days a written notice of such change and a document effecting a change of name on its bond.

I. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact upon the business of the licensee:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.
2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's credit counseling license, license to provide debt management plans, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its credit counseling, debt management plan, or similar business; or (iii) takes any other action against the licensee relating to its credit counseling, debt management plan, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.
4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed credit counseling, debt management plan, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
5. The licensee surrenders its credit counseling license, debt management plan license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.
6. The licensee is denied a credit counseling license, debt management plan license, or other license for a similar business in another state.
7. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.
8. The licensee's accreditation has expired or been suspended, revoked, or otherwise terminated.
9. Any funds held by the licensee are (i) seized by or on behalf of any court or governmental instrumentality or (ii) forfeited to or on behalf of any court or governmental instrumentality.

J. At least 15 days prior to selling or assigning any debt management plans to another person licensed under Chapter 20, a licensee shall file a written report with the commissioner that contains the following information:

1. A list of the licensee's debt management plans that are to be sold or assigned.
2. The name, address, telephone number, and email address of (i) a designated contact person for the licensee that will be selling or assigning the debt management plans and (ii) a designated contact person for the licensee that will be acquiring the debt management plans.
3. The date that the sale or assignment is scheduled to occur.
4. A copy of the agreement between the licensees.
5. A copy of the notification letter to be sent to consumers whose debt management plans are included in the sale or assignment.

K. The reports required by this section shall contain such additional information as the commissioner may reasonably require. The commissioner may also require any additional reports that he deems necessary.

10VAC5-110-30. Schedule of annual fees for the examination, supervision, and regulation of agencies providing debt management plans.

Pursuant to § 6.2-2012 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter 20 (~~§ 6.2-2000 et seq.~~) of Title 6.2 of the Code of Virginia. The fees are to defray the costs of examination, supervision, and regulation of licensees by the ~~Bureau of Financial Institutions~~ bureau.

SCHEDULE

If a licensee maintained less than 250 debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$0 plus \$4.33 per debt management plan.

If a licensee maintained 250 or more debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$500 plus \$4.33 per debt management plan.

The fee assessed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and March 25, the licensee's initial annual fee shall be \$250.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § 6.2-2012 of the Code of Virginia.

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10VAC5-110-40. Operating requirements.

A. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2005 of the Code of Virginia.

B. A licensee shall not provide debt management plan services in connection with a debt management plan that has been set up or established by any other person except a credit counselor that is employed by the licensee.

C. All money received by a licensee for distribution to consumers' creditors shall be deposited by the licensee into a separate trust account with an FDIC-insured depository institution.

1. All money in the trust account shall be deemed to be held in trust for the benefit of consumers who have given their money to the licensee for distribution. Money held in trust is not the property of the licensee or any person acting on the licensee's behalf and shall not be available to creditors of the licensee or any person acting on the licensee's behalf. However, this provision shall not be construed to prevent the recovery of funds by consumers who have given their money to the licensee for distribution provided that the money has not been disbursed to the consumers' creditors.

2. A licensee shall not commingle consumers' funds in a trust account with any of the licensee's operating funds or the funds of any other persons.

3. The provisions of this subsection shall be applicable regardless of whether consumers' funds are received or handled by (i) a licensee or (ii) a third party acting on behalf of a licensee.

D. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including but not limited to the Standards for Safeguarding Customer Information (16 CFR Part 314).

E. A licensee shall not sell or otherwise assign a debt management plan to another person unless the purchaser or assignee is also licensed under Chapter 20.

F. On or before entering into a debt management plan, a licensee shall provide a consumer with a written notice in at least 10-point boldface type. The notice shall state the following: "Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against this agency regarding your debt management plan, please contact the Bureau of Financial Institutions at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints at (804) 371-9416."

The written notice shall be furnished either as a separate document or included in the debt management plan

agreement that is required by subdivision 1 of § 6.2-2014 of the Code of Virginia.

G. A licensee shall not provide any information to the bureau that is false, misleading, or deceptive.

H. A licensee shall not provide any information to a consumer that is false, misleading, or deceptive.

I. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 20 or this chapter.

J. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 20 shall pay a nonrefundable application fee of \$500.

K. Prior to the execution of a debt management plan, a licensee shall provide each consumer with a form that contains the disclosures specified in subdivision A 9 of § 6.2-2005 of the Code of Virginia. The form shall appear in at least 12-point type and be separated from all other papers, documents, or notices obtained or furnished by the licensee. The form shall contain an acknowledgment that is signed and dated by each consumer. The acknowledgment shall appear in at least 14-point boldface type immediately above the consumer's signature line and state the following: "I acknowledge that I have received and signed this form prior to entering into a debt management plan."

L. A licensee shall not (i) allow a third party to provide any debt pooling and distribution services on its behalf or (ii) delegate to a third party any of its responsibilities under a debt management plan whereby the third party obtains control over any money provided by consumers for subsequent distribution to the consumers' creditors, unless:

1. The licensee enters into and maintains a written agreement with the third party whereby the licensee designates or appoints the third party as its agent; and

2. The licensee notifies the bureau in writing and agrees to such conditions relating to its use of such agent as may be prescribed by the bureau.

A licensee that designates or appoints a third party as its agent shall be liable and subject to enforcement action under Chapter 20 for any acts and omissions of the third party that would violate Chapter 20 or this chapter if done directly by the licensee.

M. A person shall remain subject to the provisions of Chapter 20 and this chapter applicable to licensees in connection with all debt management plan agreements that the person executed while licensed under Chapter 20 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases offering debt management plans or providing debt pooling and distribution services.

10VAC5-110-50. Advertising.

A. A licensee shall disclose the following information in its advertisements:

1. The name of the licensee as set forth in the license issued by the commission.
2. A statement that the licensee is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the licensee (i.e., DC-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

C. A licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

10VAC5-110-60. Enforcement.

A. Failure to comply with any provision of Chapter 20 or this chapter may result in civil penalties, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2021 of the Code of Virginia, a person shall be subject to a civil penalty of up to \$1,000 for every violation of Chapter 20, which includes any violation of this chapter. Furthermore, if a person violates any provision of Chapter 20 or this chapter in connection with multiple debt management plans, the person shall be subject to a separate civil penalty for each debt management plan. For example, if a person provides five debt management plans and the person violates two provisions of this chapter in connection with each of the five debt management plans, there would be a total of 10 violations and the person would be subject to a maximum civil penalty of \$10,000.

10VAC5-110-70. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R15-4449; Filed October 9, 2015, 4:33 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-165. Regulations for the Repacking of Crab Meat (amending 12VAC5-165-10, 12VAC5-165-80, 12VAC5-165-90, 12VAC5-165-100, 12VAC5-165-120, 12VAC5-165-150, 12VAC5-165-180, 12VAC5-165-220, 12VAC5-165-230, 12VAC5-165-240, 12VAC5-165-270; repealing 12VAC5-165-70, 12VAC5-165-200, 12VAC5-165-280, 12VAC5-165-290).**

Statutory Authority: § 28.2-801 of the Code of Virginia.

Effective Date: December 2, 2015.

Agency Contact: Keith Skiles, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, FAX (804) 864-7481, or email keith.skiles@vdh.virginia.gov.

Summary:

The amendments (i) align the regulations with the Code of Federal Regulations, (ii) eliminate the requirement that the repacker contact the Division of Shellfish Sanitation when any condition that may compromise the safety of the final product exists, (iii) loosen the sampling requirements for imported crab meat, and (iv) remove the requirement for a preprinted principal display panel declaring the country of origin on a container of imported crabmeat.

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

Part I
General Provisions

12VAC5-165-10. Definitions.

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

"Action level" means the limit established for a deleterious substance present in a product or the environment, above which level prescribed actions by the division may be required to protect public health.

"Agency" means the Virginia Department of Health.

"Certificate of Inspection" means a numbered certificate issued by the division to a shipper after an inspection confirms compliance with applicable regulations and standards.

"Certification number" means a unique number assigned to each shipper upon issuance of a Certificate of Inspection.

"Certified laboratory" means a laboratory certified by the U.S. Food and Drug Administration for analysis of food products.

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"Critical Control Point (~~CCP~~)" or "CCP" means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can, as a result, be prevented, eliminated or reduced to acceptable numbers.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

~~"Decertification" means the revocation of a Certificate of Inspection.~~

~~"Department" means the Virginia Department of Health.~~

"Division" means the Division of Shellfish Sanitation of the Virginia Department of Health.

"Establishment" means any vehicle, vessel, property, or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked or pasteurized in preparation for marketing.

"HACCP plan" means a written document that delineates the formal procedures that a dealer follows to implement a Hazard Analysis Critical Control Point methodology to assure food safety.

"Hazard analysis" means a process used to determine whether there are food safety hazards that are reasonably likely to occur while repacking crab meat and to identify the preventive measures that the repacker can apply to control those hazards.

"Importer" means either the owner or consignee at the time of entry of the crab meat into the United States, or the agent or representative of the foreign owner or consignee at the time of entry into the United States, who is responsible for ensuring that goods being offered for entry into the United States are in compliance with all laws affecting the importation.

"Lot" means repacked crab meat that bears the same repack date and source code.

"Preventive measure" means actions taken to prevent or control a food safety hazard.

"Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

"Processing" means cooking, picking, packing, repacking or pasteurizing crab meat.

"Processor" means a person who operates an establishment that cooks, picks, packs, repacks or pasteurizes crab meat any person engaged in commercial, custom, or institutional processing of crab meat, either in the United States or in a foreign country.

"Repacker" means a person who operates an establishment that transfers crab meat from a container originally packed by another establishment to another container.

"Repacking operation" means a process of transferring crab meat from the original shipper's packing container to a different packing container, including all steps beginning with the removal of the original containers of meat from the repacker's refrigeration and ending with the repacked crab meat in properly identified containers placed into refrigeration.

"Shipper" means a person who operates an establishment for the cooking, picking, repacking or pasteurizing of crab meat.

"Source code" means a code designated by the repacker which represents the crab processing facility where crab meat was obtained.

~~12VAC5-165-70. Oversight for safety of product. (Repealed.)~~

~~Any condition that may compromise the safety of the final product shall be identified by the repacker and the division shall be contacted for appropriate disposition of the product.~~

Part II

Sources of Crab Meat for Repacking

12VAC5-165-80. Source facility requirements.

Crab meat for repacking shall be picked and packed by a crab processing establishment [~~which that (i)~~] is currently licensed, permitted or certified and inspected by either a state public health authority or by a foreign government public health authority [~~;~~] and [~~(ii)~~] shall operate under a HACCP plan approved by the state or a foreign government public health authority, or the U.S. Food and Drug Administration. Imported crab meat shall meet the requirements for imported products set forth in 21 CFR 123.12 (60 FR 65197, December 18, 1995).

12VAC5-165-90. Verification of shipping temperatures for imported crab meat.

~~When imported crab meat is used as a source for repacking, the~~ The repacker shall provide a record of international transport temperature receiving conditions for each shipment, or other information sufficient to verify that the product was not temperature abused of crab meat. Temperature recording may be by maximum temperature recording, continuous temperature recording, or by other device approved by the Division of Shellfish Sanitation such as adequate amount of ice or adequate quantity of chemical cooling media. ~~The processor or repacker shall include the transport receiving temperature conditions as a part of the receiving CCP in its the HACCP plan.~~

12VAC5-165-100. Sampling and analysis requirements for imported crab meat.

A. ~~When imported crab meat is used as a source for repacking, the repacker shall take a minimum of five samples from the first two shipments prior to any processing to be analyzed by a certified laboratory. If all samples from both initial shipments meet the specified action levels, then the sampling interval may be reduced to once every three months (quarterly) for each shipper. If any quarterly samples exceed~~

~~the action levels, then sampling will be required on all successive shipments until all samples from two successive shipments meet the action levels as follows: importer or repacker may take samples from each lot prior to processing to be analyzed by a certified laboratory and maintain on file a copy of the sampling results for a minimum of one year. The action levels for the crab meat sampled are as follows:~~

1. Pasteurized crab meat.
 - a. Aerobic plate count; action level of >3,000/g.
 - b. Fecal coliforms; action level of >20/100g.
2. All other crab meat.
 - a. Aerobic plate count; action level of >100,000/g.
 - b. Fecal coliforms; action level of >93/100g.

~~B. When imported crab meat is used as a source for repacking, the importer or repacker shall may take a minimum of five samples from every shipment to be tested for decomposition by organoleptic sensing technique and [shall] maintain a copy of [the such] results on file for a minimum of one year. These analyses shall be conducted only by a designated person trained in organoleptic sensing technique either by Virginia Polytechnic Institute and State University (Virginia Tech), the United States Food and Drug Administration (FDA), or by another source approved by the division. The repacker shall submit to the division a copy of the certificate of training or other documentation denoting successful completion of the training from the trainer for each individual conducting the analysis, and shall maintain a copy in his records.~~

~~C. If any sample is found to exceed an action level or guideline, or is found to show evidence of decomposition, the repacker shall stop processing the lot sampled and contact the division before proceeding with processing to determine the disposition of that lot.~~

~~D. All records of sample analyses shall be kept on file at the repacker and repacker's establishment shall be made available for review by the division. These records shall be maintained for a period of one year from the date of processing for products packaged for fresh distribution, and two years for products packaged for frozen or pasteurized distribution.~~

12VAC5-165-120. Verification of container integrity for imported, pasteurized crab meat.

The repacker shall evaluate the container integrity of all imported, pasteurized crab meat products. These evaluations shall also be conducted after any pasteurization by the repacker. This evaluation shall at a minimum include visual inspection of all containers for evidence of leaks. A record of inspection shall be maintained on file by the repacker for a minimum of one year.

12VAC5-165-150. Pasteurized crab meat storage temperature.

Containers of pasteurized crab meat ~~destined for repacking~~ shall be stored ~~and transported~~ in a refrigerated room ~~or vehicle~~ at a temperature of [~~36°F~~ 40°F] or less.

12VAC5-165-180. Cooling of crab meat after repacking.

Immediately after repacking, the repacker shall place containers of repacked crab meat ~~shall be either placed into crushed or flaked ice or placed into refrigeration not to exceed [36°F 40°F], or both.~~

12VAC5-165-200. Imported crab meat to be pasteurized. (Repealed.)

~~Prior to or after repacking, the repacker shall pasteurize all imported crab meat which has not been pasteurized in the country of origin. Pasteurization shall meet the National Blue Crab Industry Pasteurization and Alternative Thermal Processing Standards, revised November 8, 1993, with records of pasteurization to be kept as required in Article 3 (12VAC5-165-240 et seq.) of this part. The heat penetration in the crab meat during the pasteurization process for all container sizes and types shall be confirmed in writing by Virginia Tech or other authority approved by the division as meeting the aforementioned minimum requirements.~~

12VAC5-165-220. Lot numbers.

A. Containers of repacked crab meat shall be stamped or embossed with the lot number.

B. Lot numbers shall consist of a repack date and a code indicating the original source firm that picked the crab meat. ~~All codes for lot numbers shall be logged in the processor records. Records shall be maintained by the repacker for a minimum of one year~~ with an explanation of the code.

12VAC5-165-230. Country of origin for imported crab meat.

Imported crab meat shall be packed by the repacker into containers ~~which~~ that bear a declaration of the country of origin of the repacked crab meat ~~on the [using a preprinted principal display panel] of the container.~~

Article 3
Records and Recordkeeping

12VAC5-165-240. Accessibility of records.

All required records shall be (i) ~~kept in logical order,~~ (ii) maintained by the repacker; and (iii) readily accessible by shall be made available to the Division of Shellfish Sanitation staff division for inspection.

12VAC5-165-270. Minimum records to be kept.

The repacker shall, ~~at a minimum,~~ maintain the following information on each lot of repacked crab meat ~~the source plant, quantity received from source, type of meat, date of repacking, buyers, and quantities of repacked lots sold. Additional clarifying records may be required if individual lots of product cannot easily be traced for a minimum of one year:~~ (i) the original processor information, (ii) verification

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records of shipping temperature conditions, (iii) records required by the repacker's HACCP plan, and (iv) repacked crab meat sales records. Additional clarifying records may be required by the division to identify lot codes on containers.

~~12VAC5-165-280. Records to be kept separate. (Repealed.)~~

~~Records for repacked imported crab meat shall be kept separate from other production records.~~

~~12VAC5-165-290. Decertification of certified facilities. (Repealed.)~~

~~Any certified crab meat processor found to be packing or repacking foreign crab meat into a container without the country of origin on the principal display panel will be decertified for 30 days, effective immediately upon the finding by the Director of the Division of Shellfish Sanitation.~~

~~DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-165)~~

~~National Blue Crab Industry Pasteurization and Alternative Thermal Processing Standards, National Blue Crab Industry Association Grades and Cooking Standards Committee, revised November 8, 1993.~~

VA.R. Doc. No. R11-2705; Filed October 2, 2015, 11:44 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-500 through 12VAC30-20-560).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 1, 2016.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Sections 32.1-324 and 32.1-325 of the Code of Virginia authorize the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. Section 32.1-325.1 of the Code of Virginia provides for a provider appeal process. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this regulatory action is to comply with the legislative mandate and address recent case law and administrative decisions. The case law and administrative decisions have created the need to clarify existing appeals processes and codify emerging processes made urgent by court and administrative case decisions. An increase in the volume of appeals, generated by provider audits and other utilization review mandates, has also created a need for this regulatory action. Additionally, recent case decisions, such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S.E. 2d 188 (2011), and its predecessor appeal in circuit court, have necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed. This regulatory action is necessary for the public health, safety, and welfare in that it provides for clarifications to the provider appeals process to help assure for proper notice and due process for providers, Medicaid members, and the general public. The proper functioning of the appeals process helps assure that all providers are held to the same standards regarding the quality of services they provide and the accuracy of the medical record documentation that they create for Medicaid members. A fair, efficient, and clear set of appeals rules enable the Medicaid system to function effectively.

Substance: The section of the State Plan for Medical Assistance that is affected by this action is Part XII, Provider Appeals (12VAC30-20-500 et seq.) of 12VAC30-20.

Current Policy: These appeal regulations were originally promulgated in 2000 and have been substantively revised only once since that time. From the onset of these regulations, the number of appeal actions has more than tripled to the current day. In 2000 and 2009, no need to provide for administrative dismissals was necessary, such as those that (i) exist for client/recipient appeals, (ii) provide for mutually agreed upon time extensions, (iii) establish a timely process for providers to challenge alleged deficiencies in case summaries, and (iv) provide consistent and effective timelines for appeal actions resulting from a remand by court order. The current process also permits exchange of documentation solely via United States postal mail, with no provision for electronic transmittal.

The increased volume of provider appeals over the past decade has taxed the resources of the department's appeals process in a manner that is not sustainable without updating, clarifying, and providing greater consistency for the appeals regulations. Specifically, a consistent timeline and method for filing documentation within normal business hours and one that allows for transmission methods in addition to United States postal mail, including electronic transmission, is essential to functioning. Recent case decisions, such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S.E. 2d 188 (2011), and its predecessor appeal in circuit court, have

necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed. Clarification as to the content of case summaries and the provider's identification of issues that the provider wants addressed in the case summary are critical for the agency to comply with the law and to provide a thorough case summary. Increases in the number of case remands necessitate a uniform method of processing remanded cases by all hearing officers. The growth in the number of appeals over the last decade necessitates that DMAS streamline the process for administratively dismissing untimely, unauthorized, and insufficient appeal requests while maintaining due process through the right to appeal such action. The elements of recommended decisions in formal hearings are also streamlined and clarified. Lastly, the volume of appeals necessitates that the parties to the appeal be permitted some consistent and defined level of flexibility to extend and adjust appeal timelines for their specific circumstances, where the timeline is not dictated by state or federal statute.

Recommendations: The proposed amendments specifically address the issues identified above, including clarity and consistency regarding DMAS's timelines for appeals and remands, specifications for time and method of filing required documentation, the process for challenging the sufficiency of case summaries, and clarification of the department's process for administrative dismissals. This action is critical to keeping abreast of the caseload increases due to enrollment growth and the increase in number, type, and complexity of provider audits and initiatives aimed at fraud, waste, and abuse. Improved consistency in methodology ensures fair and equal processing of appeals and maintenance of due process.

Issues: Appeal regulatory timetables were established a decade ago and at that time the volume of appeals was less than one-third of the present day. Over time, the volume of appeals has significantly increased, requiring regulatory clarification and updating. These recommended changes reflect the realities that the hearing officers and all affected parties face in attempting to process appeals and meet timelines that have become outdated. A consistent timeline and method for filing documentation within normal business hours and one that allows for methods other than United States postal mail for delivery, including electronic transmission, is essential to functioning efficiently. Recent case decisions, such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S.E. 2d 188 (2011), and its predecessor appeal in circuit court, have necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed. Clarification as to the content of case summaries and the provider's identification of issues that the provider wants addressed in the case summary are critical for the agency to comply with the law and provide a sufficient case summary

that addresses all of the provider's issues. Increases in the number of case remands necessitate a uniform method of processing such cases by all hearing officers.

The growth in the number and complexity of appeals over the decade necessitates that DMAS streamline the process for administratively dismissing untimely, unauthorized, and insufficient appeal requests while maintaining due process. The elements of recommended decisions in formal hearings are also streamlined and clarified. Lastly, the volume of appeals necessitates that the parties to the appeal be permitted some consistent and defined level of flexibility to extend and adjust appeal timelines for their specific circumstances, by mutual consent, where the timeline is not dictated by state or federal statute.

The primary advantage of the proposed action is to guarantee that provider appeals are afforded due process through clear and consistent processes that are not compromised as volume increases. The public is served through the agency's ability to address concerns of the courts in their recent decisions and assure that efficiency of available limited resources is maximized without compromising due process. Updating the existing regulations to reflect the practices of an increasingly digital and electronic business model improves efficiency and quality of service to providers and the public. DMAS sees no disadvantages to the proposed modifications herein.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Medical Assistance Services (DMAS) proposes to 1) address the manner in which alleged deficiencies in case summaries can be resolved and the means by which documentation can be transmitted in an informal appeal, 2) allow extension of 45 days limitation in which the hearing officer must conduct a formal hearing if agreed by all parties, and 3) update the regulations by clarifying and reorganizing the current requirements.

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

Estimated Economic Impact. The main purposes of the proposed changes are to address the manner in which alleged deficiencies in case summaries can be resolved and the means by which documentation can be transmitted in an informal appeal. In a recent case, a Circuit Court ruled and the Appeals Court affirmed an adverse decision against DMAS's decision on a provider appeal.¹ According to DMAS, the case has necessitated new rules for addressing the alleged deficiencies in case summaries and the means by which documentation can be transmitted.

To address the manner in which alleged deficiencies in case summaries can be resolved, one of the proposed changes will require the providers to notify DMAS of alleged deficiencies within 12 days of the due date of the case summary. Upon receipt of the provider's notice, DMAS will have 12 days to address the alleged deficiency. With this change, DMAS will

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be assured to know if there are any issues with its case summary, and if so be able to address them in a given time frame. The providers on the other hand will be afforded a chance to bring to DMAS's attention any deficiencies and have DMAS address it.

Another change will clarify that documents can be transmitted by courier or hand delivery, facsimile, electronic mail, or electronic submission. Current language uses the term "mail" and the provider in the appealed case challenged whether electronic mailing of case summary was sufficient. In order to remove any ambiguity the current use of "mail" may create, the proposed regulations clarify that electronic transmittal of documents is allowed.

These two changes will address two issues the current regulation has which came out during the recent litigation. Thus, the proposed changes should produce a net benefit in that they will improve communications regarding the sufficiency of case summaries and allow more modern and cost effective means of document transmittal between the providers and DMAS.

The proposed changes will also allow an extension of a 45 days limitation in which the hearing officer shall conduct a formal hearing if agreed to by the hearing officer, DMAS, and the provider. This change is likely to produce a net benefit as it would allow additional time to hold a hearing only if agreed to by all parties.

Finally, DMAS states that these appeal regulations were originally promulgated in 2000 and have been substantively revised only once since that time. Consequently DMAS proposes a number of updates. These updates include clarifications of the current requirements and authorities the regulation provides and reorganization of sections within the regulation. For example, they clarify the conditions when an administrative dismissal may occur; clarify whenever an informal appeal is required pursuant to a remand by a court order, all time periods run effective as of the date stamped by DMAS on documentation containing the remand; move the timelines set in section 560 (E) to 560 (B). These changes do not contain any new rules or modify existing rules. Thus, they are not expected to produce any significant economic impact other than improving the clarity and readability of already existing requirements.

Businesses and Entities Affected. These regulations apply to approximately 52,000 providers. Most of the providers, with the exception of 108 hospitals and 273 nursing facilities, are considered small businesses. In fiscal year 2014, there were 6,260 informal appeals of which 113 turned into formal appeals.

Localities Particularly Affected. The proposed regulations apply statewide.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. Most of the 52,000 providers these regulations apply to are considered small businesses. Expected economic effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are not anticipated to have an adverse impact on small businesses.

Real Estate Development Costs. No effect on real estate development costs is expected.

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
 - the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
 - a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate

for the purposes of public review and comment on the proposed regulation.

¹ See VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S. E. 2d 188 (2011) for details.

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

Summary:

The proposed amendments (i) address the manner in which alleged deficiencies in case summaries can be resolved and the means by which documentation can be transmitted in an informal appeal; (ii) clarify and adjust timelines and filing specifications, for example an extension of a 45-day limitation in which the hearing officer must conduct a formal hearing if agreed to by all parties and delivery using electronic means are added; and (iii) update and clarify the department's authority to take administrative action to dismiss untimely, unauthorized, or insufficient appeal requests.

Part XII
Provider Appeals

12VAC30-20-500. Definitions.

The following words, and terms when used in this part, shall have the following meanings:

"Administrative dismissal" means a dismissal that requires only the issuance of a decision with appeal rights but does not require the submission of a case summary or any further proceeding.

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§ 2.2-4020 and 32.1-325.1 of the Code of Virginia and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§ 2.2-4019 and 32.1-325.1 of the Code of Virginia and this part.

"Last known address" means the provider's physical or electronic correspondence address on record in the DMAS Medicaid Management Information System as of the date DMAS transmits an item to the provider or the address of the provider's counsel of record. Nothing herein shall prevent DMAS and the provider from agreeing in writing during the course of an audit or an appeal to use an alternative location for the transmittal of an item or items related to the audit or the appeal.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

"Transmit" means to send by means of the United States mail, courier or other hand delivery, facsimile, electronic mail, or electronic submission.

12VAC30-20-520. Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and ~~shall supersede~~ supersedes any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), including DMAS' interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall ~~mail~~ transmit all items to the last known address of the provider. It is presumed that DMAS ~~mails~~ transmits items on the date noted on the item. It is presumed that providers receive items ~~mailed~~ transmitted by United States mail to their last known address within three days after DMAS ~~mails~~ transmits the item by United States mail. It is presumed that providers receive items transmitted by electronic mail or facsimile to their last known electronic mail address or facsimile number on the date transmitted. It is presumed that the items are received upon the date and time of delivery to the provider's last known address by a courier. These presumptions in this section shall apply unless the provider, through evidence beyond a mere denial of receipt, introduces evidence sufficient to rebut the presumption. If a provider requests a copy of an item, the transmittal date for the item remains the date originally noted on the item, and not the date that the copy of the requested item is transmitted. A provider's failure to accept delivery of an item transmitted by DMAS, or a provider's failure to open an item upon receipt, shall not result in an extension of any of the timelines established by this part.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is date stamped by the DMAS Appeals Division in Richmond, Virginia.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed for the full or partial day, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at DMAS' main office in Richmond, Virginia, or at such other place as agreed ~~to~~ upon in writing by the parties DMAS, the provider, and the informal appeals agent for informal appeals. For formal appeals, this agreement shall be between DMAS, the provider, and the hearing officer.

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G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal ~~administrative~~ appeal if the provider substantially prevails on the merits of the appeal and DMAS' position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

I. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time on the due date shall be untimely.

12VAC30-20-540. Informal appeals.

~~A. Providers appealing a DMAS decision shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. Notice of informal appeal.~~

1. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial.

2. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues being appealed, adjustments, or items that the provider is appealing.

3. Providers appealing all other DMAS decisions shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. The written notice of informal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing.

B. Administrative dismissals.

1. Failure to timely file a written notice of informal appeal within 30 days of receipt of the decision or within 90 days of receipt of the notice of program reimbursement shall result in dismissal of the appeal. Failure to file a written notice of informal appeal for termination or denial of a Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia within 15 days of receipt of the notice of termination or denial shall result in dismissal of the appeal with the information required by subdivision A 2 or A 3 of this section shall result in an administrative dismissal.

2. A representative, billing company, or other third-party entity filing a written notice of appeal on behalf of a provider shall submit to DMAS, at the time of filing or

upon request, a written authorization to act on the provider's behalf, signed by the provider. The authorization shall reference the specific adverse action or actions being appealed including, if applicable, each patient's name and date of service. Failure to submit a written authorization as specified in this subdivision shall result in an administrative dismissal. This requirement shall not apply to an appeal filed by a Virginia licensed attorney.

3. If a provider has not exhausted any applicable DMAS or contractor reconsideration or review process or contractor's internal appeals process that the provider is required to exhaust before filing a DMAS informal appeal, the provider's written notice of informal appeal shall be administratively dismissed.

4. If DMAS has not issued a decision with appeal rights, the provider's attempt to file a written notice of informal appeal, prior to the issuance of a decision by DMAS that has appeal rights, shall be administratively dismissed.

B- C. Written case summary.

1. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal. ~~DMAS and~~ shall ~~mail~~ transmit a complete copy of the case summary to the provider on the same day ~~that the case summary is filed with the DMAS Appeals Division.~~

~~The case summary shall address each adjustment, patient, service date, or other disputed matter and shall state DMAS' position for each adjustment, patient, service date, or other disputed matter. The case summary shall contain the factual basis for each adjustment, patient, service date, or other disputed matter and any other information, authority, or documentation DMAS relied upon in taking its action or making its decision.~~ 2. For each adjustment, patient, and service date or other disputed matter identified by the provider in its notice of informal appeal, the case summary shall explain the factual basis upon which DMAS relied in taking its action or making its decision and identify any authority or documentation upon which DMAS relied in taking its action or making its decision.

3. Failure to file a written case summary with the DMAS Appeals Division ~~in the detail specified within 30 days of the filing of the provider's notice of informal appeal~~ within 30 days of the filing of the written notice of informal appeal shall result in dismissal in favor of the provider ~~on those issues not addressed in the detail specified.~~

4. The provider shall have 12 days following the due date of the case summary to file with the DMAS Appeals Division and transmit to the author of the case summary a written notice of all alleged deficiencies in the case summary that the provider knows, or reasonably should know, exist. Failure of the provider to timely file a written notice of deficiency with the DMAS Appeals Division shall be deemed a waiver of all deficiencies, alleged or otherwise, with the case summary.

5. Upon timely receipt of the provider's notice of deficiency, DMAS shall have 12 days to address the alleged deficiency or deficiencies. If DMAS does not address the alleged deficiency or does not address the alleged deficiency to the provider's satisfaction, the alleged deficiency or deficiencies shall become an issue to be addressed by the informal appeals agent as part of the informal appeal decision.

6. The informal appeals agent shall make a determination as to each deficiency that is alleged by the provider as set forth in this subsection. In making that determination, the informal appeals agent shall determine whether the alleged deficiency is such that it could not reasonably be determined from the case summary the factual basis and authority for the DMAS action, relating to the alleged deficiency, so as to require a dismissal in favor of the provider on the issue or issues to which the alleged deficiency pertains.

C. D. Conference.

1. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS and the provider, and the informal appeals agent agree, the conference may be conducted by way of written submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal appeals agent shall be considered.

2. The conference may be recorded at the discretion of the informal appeals agent and solely for the convenience of the informal appeals agent. ~~Since~~ Because the conference is not an adversarial or evidentiary proceeding, recordings shall not be made part of the administrative record and shall not be made available to anyone other than the informal appeals agent no other recordings or transcriptions shall be permitted. Any recordings made for the convenience of the informal appeals agent shall not be released to DMAS or to the provider.

3. Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

E. Informal appeals decision. The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal.

F. Remand. Whenever an informal appeal is required pursuant to a remand by court order, final agency decision, agreement of the parties, or otherwise, all time periods set forth in this section shall begin to run effective with the date

that the document containing the remand is date-stamped by the DMAS Appeals Division in Richmond, Virginia.

12VAC30-20-560. Formal appeals.

A. ~~Any~~ A provider appealing a DMAS informal appeal decision shall file a written notice of formal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the informal appeal decision. The notice of formal appeal shall identify the issues being appealed each adjustment, patient, service date, or other disputed matter that the provider is appealing. Failure to file a written notice of formal appeal in the detail specified within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal. Pursuant to § 2.2-4019 A of the Code of Virginia, DMAS shall ascertain the fact basis for decisions through informal proceedings unless the parties consent in writing to waive such a conference or proceeding to go directly to a formal hearing, and therefore only issues that were addressed pursuant to § 2.2-4019 shall be addressed in the formal appeal, unless DMAS and the provider consent to waive the informal fact-finding process under § 2.2-4019 A of the Code of Virginia.

B. ~~DMAS and the provider shall exchange and file with the hearing officer all documentary evidence on which DMAS or the provider relies within 21 days of the filing of the notice of formal appeal. Only documents filed within 21 days of the filing of the notice of formal appeal shall be considered. DMAS and the provider shall file any objections to the admissibility of documentary evidence within seven days of the filing of the documentary evidence. Only objections filed within seven days of the filing of the documentary evidence shall be considered. The hearing officer shall rule on any objections within seven days of the filing of the objections. Documentary evidence.~~

1. Objections to documentary evidence, opening briefs, and reply briefs shall be filed with the DMAS Appeals Division on the date specified in this subsection. The hearing officer shall only consider those documents or pleadings that are filed within the required timeline. DMAS and the provider shall also transmit any required document to the other party and to the hearing officer on the date of filing.

a. All documentary evidence upon which DMAS or the provider relies shall be filed within 21 days of the filing of the notice of formal appeal.

b. Any objections to the admissibility of documentary evidence shall be filed within seven days of the filing of the documentary evidence. The hearing officer shall rule on any such objections within seven days of the filing of the objections.

c. The opening brief shall be filed by DMAS and the provider within 30 days of the completion of the hearing.

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d. Any reply brief from DMAS or the provider shall be filed within 10 days of the filing of the opening brief to which the reply brief responds.

2. If there has been an extension to the time for conducting the hearing pursuant to subsection C of this section, the hearing officer is authorized to alter the due dates for filing opening and reply briefs to permit the hearing officer to be in compliance with the due date for the submission of the recommended decision as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section.

C. The hearing officer shall conduct the hearing within 45 days from the filing of the notice of formal appeal, unless the hearing officer, DMAS, and the provider all mutually agree to extend the time for conducting the hearing. Notwithstanding the foregoing, the due date for the hearing officer to submit the recommended decision to the DMAS director, as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section, shall not be extended or otherwise changed.

D. Hearings shall be transcribed by a court reporter retained by DMAS.

~~E. Upon completion of the hearing, DMAS and the provider shall have 30 days to exchange and file with the hearing officer an opening brief. Only opening briefs filed within 30 days after the hearing shall be considered. DMAS and the provider shall have 10 days to exchange and file with the hearing officer a reply brief after the opening brief has been filed. Only reply briefs filed within 10 days after the opening brief has been filed shall be considered.~~

~~F. E.~~ The hearing officer shall submit a recommended decision to the DMAS director with a copy to the provider within 120 days of receipt ~~the filing~~ of the formal appeal request notice. If the hearing officer does not submit a recommended decision within 120 days of the filing of the notice of formal appeal, then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

~~G. F.~~ Upon receipt of the hearing officer's recommended decision, the DMAS director shall notify DMAS and the provider in writing that any written exceptions to the hearing officer's recommended decision shall be filed with the DMAS Appeals Division within ~~30~~ 14 days of receipt of the DMAS director's letter. Only exceptions filed within ~~30~~ 14 days of receipt of the DMAS director's letter shall be considered. ~~The DMAS director shall issue the final agency case decision within 60 days of receipt of the hearing officer's recommended decision.~~

G. The DMAS director shall issue the final agency decision within 60 days of receipt of the hearing officer's recommended decision in accordance with § 32.1-325.1 B of the Code of Virginia.

VA.R. Doc. No. R14-3105; Filed October 2, 2015, 12:44 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 2, 2015.

Effective Date: December 17, 2015.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to promulgate State Plan regulations to adopt the option offered under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) to establish a data match with the Social Security Administration to verify United States citizenship and identity through the use of an individual's Social Security number. Adoption of this option will result in the implementation of an electronic data match with the Social Security Administration and reduce the number of individuals who will need to provide original documentation of United States citizenship and identity. This change will protect the health, safety, and welfare of the citizens of the Commonwealth by streamlining the application documentation and verification process, thus improving Medicaid enrollment timeliness and a workload reduction for most local department of social services eligibility workers.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being utilized to promulgate this change as it is expected to be a noncontroversial amendment to existing regulations. Existing regulations currently require an applicant for or recipient of Medicaid to verify citizenship and identity with original documentation. This action will serve to provide a way to meet this requirement electronically without the individual applicant having to provide original documentation.

Substance: The section of the State Plan for Medical Assistance that is affected by this action is 12VAC30-40-10. This action adopts the eligibility verification options made available through § 211 of CHIPRA of 2009.

The Deficit Reduction Act of 2005 (DRA), signed into law on February 8, 2006, first mandated that applicants for and recipients of Medicaid who claim to be United States citizens provide documentation of their United States citizenship and identity. This provision of the DRA became effective on July 1, 2006, and was implemented in Virginia on that date. Prior to implementation of this requirement, individuals who applied for or received Medicaid could self-declare their United States citizenship, but were not required to provide documentation to support the declaration. Regulations promulgated by the Centers for Medicare and Medicaid Services (CMS) took the requirement to verify one step further by mandating that only original documentation could be accepted to verify an individual's citizenship and identity; copies of original documents could not be accepted.

The requirement to provide original documentation served to be a barrier to enrollment in the Medicaid program. Many applicants and recipients had copies of documents, but did not have original documentation. Payment for original documents and the length of time it took to receive out-of-state documentation became an issue and resulted in some applications for Medicaid being denied due to failure to provide this necessary verification.

Section 211 of CHIPRA gives states the ability to enter into a data match with the Social Security Administration to verify the citizenship and identity of Medicaid applicants and recipients who claim to be United States citizens. Because provision of a Social Security number is already a condition of eligibility for Medicaid, adoption of this option will streamline the eligibility process and thereby create a seamless process for most Medicaid applicants and recipients. Additionally, adoption of this option should result in workload reduction for most local department of social services eligibility workers as they will no longer be required to request original documentation and provide the follow up that has been needed to get the necessary documentation.

Issues: There is no disadvantage to the public or the Commonwealth with the adoption of this regulation. The advantages to the state, the agency, and the public are that the Medicaid program will be able to electronically verify the United States citizenship and identity of Medicaid applicants and recipients rather than requiring them to provide original documentation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will adopt an automated process for verification of citizenship and identity for Medicaid directly with the Social Security Administration.

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

Estimated Economic Impact. The proposed regulations will adopt an automated process for verification of citizenship and

identity for Medicaid directly with the Social Security Administration.

Pursuant to the Deficit Reduction Act of 2005, Centers for Medicare and Medicaid Services has been requiring that applicants for Medicaid provide original documentation to verify their citizenship and identity. The Children's Health Insurance Program Reauthorization Act of 2009 allows states the ability to enter into a data match directly with the Social Security Administration to verify the citizenship and identity of applicants. The proposed regulations will take advantage of this newly available alternate verification process.

The main economic benefit of the proposed change will accrue to the Medicaid applicants who do not have their original citizenship and identity documents readily available. They will no longer have to incur costs associated with obtaining original documentation of their U.S. citizenship and identity. The proposed change will also eliminate the delays in accessing health care that would have been present due to the time needed to obtain the required documentation. Finally, the proposed changes are expected to reduce the workload of Department of Social Services eligibility workers as the verification of citizenship and identity will be performed automatically.

On the other hand, the Department of Medical Assistance Services anticipates that the automation of the verification process will require approximately \$24,900 in state funds and \$224,100 in federal funds to accomplish.

Businesses and Entities Affected. The proposed regulations will primarily affect Medicaid applicants. Approximately 10,000 applications are received per month.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant direct effect on employment is expected.

Effects on the Use and Value of Private Property. No effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. There are no expected direct costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not have an adverse affect on small businesses.

Real Estate Development Costs. No significant effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,

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

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This regulatory action adopts an option offered to states under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Section 211 of CHIPRA provides an option to adopt an alternative process for verification of citizenship and identity for Medicaid, giving states the ability to enter into a data match with the Social Security Administration to verify the citizenship and identity of Medicaid applicants and recipients who claim to be United States citizens. The amendments set out the data match document verification method and include document verification through the data match program as a method to meet the proof of eligibility requirements of citizenship.

Part I

General Conditions of Eligibility

12VAC30-40-10. General conditions of eligibility.

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II and III of this chapter) to receive services.
2. Meets the applicable nonfinancial eligibility conditions.
 - a. For the categorically needy:
 - (1) Except as specified under ~~items~~ subdivisions 2 a (2) and (3) below of this section, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.
 - (2) For SSI-related individuals, meets the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.
 - (3) For financially eligible pregnant women, infants, or children covered under § 1902(a)(10)(A)(i)(IV),

1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Social Security Act (Act), meets the nonfinancial criteria of § 1902(l) of the Act.

(4) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, meets the nonfinancial criteria of § 1902(m) of the Act.

b. For the medically needy, meets the nonfinancial eligibility conditions of 42 CFR Part 435.

c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, meets the nonfinancial criteria of § 1905(p) of the Act.

d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, meets the nonfinancial criteria of § 1905(s).

3. Is residing in the United States and:

a. Is a citizen or national of the United States; or

b. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996;

c. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193;

d. Is an alien who is not a qualified alien, or who is a qualified alien who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by Public Law 104-193 (coverage must be restricted to certain emergency services); or

e. Is an alien who is a pregnant woman or who is a child under the age of 19 who is legally residing in the United States and whose coverage is authorized under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). CHIPRA provides for coverage of the following individuals:

(1) A qualified alien as defined in § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(2) An alien in nonimmigrant status who has not violated the terms of the status under which he was admitted or to which he has changed after admission;

(3) An alien who has been paroled into the United States pursuant to § 212(d)(5) of the Immigration and Nationality Act (INA) for less than one year, except for an alien paroled for prosecution, for deferred inspection, or pending removal proceedings;

(4) An alien who belongs to one of the following classes:

(a) Individuals currently in temporary resident status pursuant to § 210 or 245A of the INA;

(b) Individuals currently under Temporary Protected Status (TPS) pursuant to § 244 of the INA and pending

applicants to TPS who have been granted employment authorization;

(c) Aliens who have been granted employment authorization under 8 USC § 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(d) Family unity beneficiaries pursuant to § 301 of ~~Pub. L.~~ Public Law No. 101-649 as amended;

(e) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President of the United States;

(f) Aliens currently in deferred action status; and

(g) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under § 208(a) of the INA or for withholding of removal under § 241(b)(3) of the INA or under the Convention against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention against Torture;

(7) A child who has a pending application for Special Immigrant Juvenile status as described in § 101(a)(27)(J) of the INA;

(8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC § 1806(e); or

(9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

4. Is a resident of the state, regardless of whether or not the individual maintains the residence permanently or maintains ~~at~~ the residence as a fixed address. The state has open ~~agreement(s)~~ interstate residency agreements.

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the ~~mentally retarded~~ intellectually disabled, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. a. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

~~An applicant or recipient must~~ b. Shall also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid

and on whose behalf the individual can make an assignment; except that individuals described in ~~§ 1902(1)(1)(A)~~ § 1902(1)(1)(A) of the Social Security Act (pregnant women and women in the ~~post-partum~~ postpartum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

~~An applicant or recipient must~~ c. Shall also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

7. a. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

b. ~~Applicant or recipient is~~ Is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d) unless citizenship and identity has been verified by the Commissioner of Social Security pursuant to § 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA), or the individual is otherwise exempt from this requirement. Qualified aliens signing the declaration of satisfactory immigration status ~~required by § 1137(d)~~ must also present and have verified documents establishing the claimed immigration status under § 137(d). Exception: Nonqualified aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) ~~as described in § 1137(f).~~

8. Is not required to apply for AFDC benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)

10. Is required to apply for coverage under Medicare A, B and/or D if it is likely that the individual would meet the eligibility criteria for any or all of those programs. The state agrees to pay any applicable premiums and cost-sharing (except those applicable under Part D) for individuals required to apply for Medicare. Application for

Regulations

Medicare is a condition of eligibility unless the state does not pay the Medicare premiums, deductibles or co-insurance (except those applicable under Part D) for persons covered by the Medicaid eligibility group under which the individual is applying.

11. Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

12. Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds \$500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest \$1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 or who is disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

VA.R. Doc. No. R16-2264; Filed October 2, 2015, 1:03 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Virginia Board for Asbestos, Lead, and Home Inspectors. 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 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.

Titles of Regulations: **18VAC15-20. Virginia Asbestos Licensing Regulations.**

18VAC15-30. Virginia Lead-Based Paint Activities Regulations.

18VAC15-40. Virginia Certified Home Inspectors Regulations.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors,

Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0389, or email trisha.henshaw@dpor.virginia.gov.

FORMS (18VAC15-20)

~~Asbestos Worker License Application, A506-3301LIC v3, (eff. 5/15)~~

~~Asbestos Supervisor License Application, A506-3302LIC v3, (eff. 5/15)~~

~~Asbestos Inspector License Application, A506-3303LIC v4, (eff. 5/15)~~

~~Asbestos Management Planner License Application, A506-3304LIC v3, (eff. 5/15)~~

~~Asbestos Project Designer License Application, A506-3305LIC v3, (eff. 5/15)~~

~~Asbestos Project Monitor License Application, A506-3309LIC v4, (eff. 5/15)~~

~~Individual Asbestos License Renewal Form, A506-33AREN v2, (eff. 5/15)~~

~~Asbestos Analytical Laboratory License Renewal Form, A506-3333REN v2, 05/01/2015~~

~~Contractor Asbestos & Lead License Renewal Form, A506-33CONREN v2, 05/01/2015~~

~~Experience Verification, 33AEXPED (rev. 1/05)~~

~~Education Verification, 33AEXPED (rev. 1/05)~~

~~Virginia Asbestos Licensing Consumer Information Sheet, 33ACIS (rev. 1/02)~~

~~Inspector/Project Designer Contractor Disclosure Form, 33ADIS (rev. 1/02)~~

~~Asbestos Contractor License Application, A506-3306LIC v3, (eff. 5/15)~~

~~Asbestos Analytical Laboratory License Application, A506-3333LIC v5, (eff. 5/15)~~

~~Asbestos Training Program Review and Audit Application, A506-3331ACRS v3, (eff. 5/15)~~

~~Asbestos Training Notification, 33ATNO (eff. 12/06)~~

~~Asbestos Training Program Participant List, 33ATPL (eff. 12/06)~~

[Asbestos Worker License Application, A506-3301LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Supervisor License Application, A506-3302LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Inspector License Application, A506-3303LIC v5 \(rev. 8/2015\)](#)

[Asbestos Management Planner License Application, A506-3304LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Project Designer License Application, A506-3305LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Project Monitor License Application, A506-3309LIC-v5 \(rev. 8/2015\)](#)

[Individual - Asbestos License Renewal Form, A506-33AREN-v3 \(rev. 8/2015\)](#)

[Asbestos Analytical Laboratory License Renewal Form, A506-3333REN-v3 \(rev. 8/2015\)](#)

[Contractor - Asbestos & Lead License Renewal Form, A506-33CONREN-v3 \(rev. 8/2015\)](#)

[Asbestos - Experience Verification Application, A506-33AEXP-v4 \(rev. 8/2015\)](#)

[Asbestos - Education Verification Application, A506-33AED-v3 \(rev. 8/2015\)](#)

[Virginia Asbestos Licensing Consumer Information Sheet, A506-33ACIS-v2 \(rev. 8/2013\)](#)

[Inspector/Project Designer/Contractor Disclosure Form, A506-33DIS-v2 \(rev. 8/2013\)](#)

[Asbestos Contractor License Application, A506-3306LIC-v4 \(rev. 8/2015\)](#)

[Asbestos Analytical Laboratory License Application, A506-3333LIC-v6 \(rev. 8/2015\)](#)

[Asbestos Training Program Review and Audit Application, A506-3331ACRS-v4 \(rev. 8/2015\)](#)

[Asbestos Project Monitor - Work Experience Log, A506-3309EXP-v3 \(rev. 8/2015\)](#)

FORMS (18VAC15-30)

[Lead Abatement Worker License Application, A506-3351LIC-v3 \(eff. 8/2015\)](#)

[Lead Abatement Supervisor License Application, A506-3353LIC-v4 \(eff. 8/2015\)](#)

[Lead Abatement Inspector License Application, A506-3355LIC-v3 \(eff. 8/2015\)](#)

[Lead Abatement Risk Assessor License Application, A506-3356LIC-v5 \(eff. 8/2015\)](#)

[Lead Abatement Project Designer License Application, A506-3357LIC-v3 \(eff. 8/2015\)](#)

[Lead Abatement Contractor License Application, A506-3358LIC-v3 \(eff. 8/2015\)](#)

[Contractor - Asbestos & Lead License Renewal Form, A506-33CONREN-v3 \(eff. 8/2015\)](#)

[Individual - Lead License Renewal Form, A506-33LREN-v2 \(eff. 8/2015\)](#)

~~[Lead Education Verification Application, A506-33LED-v2 \(eff. 8/2013\)](#)~~

~~[Lead Experience Verification Application, A506-33LEXP-v2 \(eff. 8/2013\)](#)~~

[Lead - Education Verification Application, A506-33LED-v3 \(rev. 8/2015\)](#)

[Lead - Experience Verification Application, A506-33LEXP-v3 \(rev. 8/2015\)](#)

[Lead Training Course Application, 3331LCRS-v4 \(eff. 8/2015\)](#)

[Inspector/Risk Assessor/Project Designer/Contractor Disclosure Form, A506-33LDIS-v2 \(eff. 8/2013\)](#)

[Virginia Lead Licensing Consumer Information Sheet, A506-33LCIS-v2 \(eff. 8/2013\)](#)

FORMS (18VAC15-40)

~~[Home Inspector Association Membership Form, A506-3380AMF-v3 \(eff. 8/2013\)](#)~~

[Home Inspector Association Membership Form, A506-3380AMF-v4 \(rev. 8/2015\)](#)

[Home Inspector Certification Application Instructions, A506-3380INS-v2 \(eff. 8/2015\)](#)

[Home Inspector Certification Application, A506-3380CERT-v3 \(eff. 8/2015\)](#)

~~[Home Inspector Experience Verification Form, A506-3380EXP-v3 \(eff. 8/2013\)](#)~~

[Home Inspector Experience Verification Form, A506-3380EXP-v4 \(rev. 8/2015\)](#)

VA.R. Doc. No. R16-4539; Filed October 8, 2015, 4:40 p.m.

COMMON INTEREST COMMUNITY BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulations have been filed by the Common Interest Community Board. 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 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.

Titles of Regulations: **18VAC48-30. Condominium Regulations.**

18VAC48-50. Common Interest Community Manager Regulations.

18VAC48-60. Common Interest Community Board Management Information Fund Regulations.

Agency Contact: Trisha L. Henshaw, Executive Director, Common Interest Community Board, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0389, or email trisha.henshaw@dpor.virginia.gov.

FORMS (18VAC48-30)

[Condominium Registration Application, A492-0517REG-v2 \(rev. 8/15\)](#)

~~[Declarant Annual Report - Condominium, A492-0517ANRPT-v2 \(rev. 1/14\)](#)~~

[Declarant Annual Report - Condominium, A492-0517ANRPT-v3 \(rev. 8/2015\)](#)

[Condominium Bond/Letter of Credit Verification Form, A492-0517BNDLOC-v1 \(rev. 9/13\)](#)

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[Exhibit H - Bond to Insure Payment of Assessments, A492-0517BOND-v2 \(rev. 11/13\)](#)

[Condominium Registration Application - Exhibit H, Sample Form, A492-0517LOC-v2 \(eff. 11/13\)](#)

FORMS (18VAC48-50)

~~Common Interest Community Manager Personnel Change Form, MGRCHG (eff. 03/12).~~

~~Common Interest Community Manager License Application, MGRLIC (eff. 03/12).~~

~~CIC Manager Training Program Approval Application, 05TRNGPROV (eff. 03/12).~~

~~Common Interest Community Manager Application Supplement Experience Verification Form, CICEXP (eff. 03/12).~~

~~Common Interest Community Manager Application Supplement Training Program Equivalency Form, CICTRNEQ (eff. 03/12).~~

[Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager License Application, A492-0501LIC-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v1 \(eff. 10/2013\)](#)

[Certified Principals/Supervisory Employee Experience Verification Form, A492-0510EXP-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Application Comprehensive Training Program Equivalency Form, A492-0501TREQ-v1 \(eff. 9/2013\)](#)

[Common Interest Community Manager License Renewal Application, A492-0501REN-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Application Supplement Experience Verification Form, A492-0510EXP-v1 \(eff. 10/2013\)](#)

FORMS (18VAC48-60)

~~Community Association Registration Application, ASSOCANRPT (eff. 9/08)~~

~~Declarant Annual Report for Condominium, condo annual report (eff. 9/08)~~

[Community Association Registration Application, A492-0550REG-v1 \(eff. 9/2013\)](#)

[Community Association Annual Report, A492-0550ANRPT-v2int \(eff. 3/15\)](#)

~~Governing Board Change Form, BODCHG (eff. 11/08)~~

[Community Association Governing Board Change Form, A492-0550GBCHG-v1 \(eff. 9/2013\)](#)

[Community Association Point of Contact/Management Change Form, A492-0550POCCHG-v1 \(eff. 9/2013\)](#)

VA.R. Doc. No. R16-4536; Filed October 8, 2015, 10:52 a.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Common Interest Community Board. 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 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.

Title of Regulation: **18VAC48-70. Common Interest Community Ombudsman Regulations.**

Agency Contact: Trisha L. Henshaw, Executive Director, Common Interest Community Board, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0389, or email trisha.henshaw@dpor.virginia.gov.

FORMS (18VAC48-70)

~~Association Complaint Form (10/09).~~

~~Request for Waiver of Filing Fee (10/09).~~

~~Notice of Final Adverse Decision (10/09).~~

[Common Interest Community Complaint Form, F491-CICCOMP-v2 \(rev. 11/2012\)](#)

[Request for Waiver of Filing Fee, F491-CICFW-v1 \(eff. 10/2012\)](#)

[Notice of Final Adverse Decision, F491-CICNOTE-v1 \(eff. 10/2012\)](#)

VA.R. Doc. No. R16-4537; Filed October 8, 2015, 11:09 a.m.

BOARD OF DENTISTRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Dentistry is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Dentistry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice (amending 18VAC60-20-20).**

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

Effective Date: December 2, 2015.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendments reduce renewal fees for the renewal year of 2016. The renewal fee for a dentist will be reduced from

\$285 to \$210 and the renewal fee for a dental hygienist will be reduced from \$75 to \$55. Other license, registration, and permit renewal fees are also reduced by approximately 25%.

Part II
Renewal and Fees

18VAC60-20-20. Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration shall, on or before March 31, renew his license or registration. Every person holding a temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be \$285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$75. The fee for renewal of registration as a dental assistant II shall be \$50.
2. The fee for renewal of an inactive license shall be \$145 for dentists and \$40 for dental hygienists. The fee for renewal of an inactive registration as a dental assistant II shall be \$25.
3. The fee for renewal of a restricted volunteer license shall be \$15.
4. The application fee for temporary resident's license shall be \$60. The annual renewal fee shall be \$35 a year. An additional fee for late renewal of licensure shall be \$15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of \$100 for dentists with an active license, \$25 for dental hygienists with an active license, and \$20 for a dental assistant II with active registration. The late fee shall be \$50 for dentists with an inactive license, \$15 for dental hygienists with an inactive license, and \$10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of \$500 for dentists, \$200 for dental hygienists, or \$125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of \$1,000 for dentists, \$500 for dental hygienists, and \$300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$750 for dentists, \$400 for dental hygienists, and \$250 for dental assistants II.

E. For the renewal of licenses, registrations, certifications, and permits in 2016, the following fees shall be in effect:

<u>Dentist - active</u>	<u>\$210</u>
<u>Dentist- inactive</u>	<u>\$105</u>
<u>Dental full-time faculty</u>	<u>\$210</u>
<u>Dental hygienist - active</u>	<u>\$55</u>
<u>Dental hygienist - inactive</u>	<u>\$30</u>
<u>Dental assistant II</u>	<u>\$35</u>
<u>Temporary resident</u>	<u>\$25</u>
<u>Dental restricted volunteer</u>	<u>\$10</u>
<u>Dental hygienist restricted volunteer</u>	<u>\$10</u>
<u>Oral/maxillofacial surgeon registration</u>	<u>\$130</u>
<u>Cosmetic procedure certification</u>	<u>\$75</u>
<u>Conscious/moderate sedation certification</u>	<u>\$75</u>
<u>Deep sedation/general anesthesia</u>	<u>\$75</u>
<u>Mobile dental clinic</u>	<u>\$110</u>

VA.R. Doc. No. R16-4497; Filed October 5, 2015, 10:50 a.m.

Regulations

Final Regulation

Titles of Regulations: **18VAC60-15. Regulations Governing the Disciplinary Process (adding 18VAC60-15-10, 18VAC60-15-20).**

18VAC60-20. Regulations Governing Dental Practice (repealing 18VAC60-20-10 through 18VAC60-20-352).

18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-10 through 18VAC60-21-430).

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (adding 18VAC60-25-10 through 18VAC60-25-210).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (adding 18VAC60-30-10 through 18VAC60-30-170).

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

Effective Date: December 2, 2015.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

Pursuant to a periodic review, the Board of Dentistry repeals its regulatory chapter governing all dental practices (18VAC60-20) and replaces it with four regulatory chapters derived from 18VAC60-20. Regulations Governing the Disciplinary Process (18VAC60-15) sets out provisions for recovery of disciplinary costs in a case in which there is a finding of a violation and for establishment of criteria for delegation of information fact-finding to an agency subordinate. Regulations Governing the Practice of Dentistry (18VAC60-21) includes provisions that are applicable to the licensure and practice of dentists and oral and maxillofacial surgeons. Regulations Governing the Practice of Dental Hygiene (18VAC60-25) include provisions that are applicable to the licensure and practice of dental hygienists. Regulations Governing the Practice of Dental Assistants (18VAC60-30) include provisions on dental practice that are applicable to the registration and practice of dental assistants. This action includes a reduction in fees for the renewal of licenses, registrations, certifications, and permits in 2016 adopted in a separate action.

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

CHAPTER 15

REGULATIONS GOVERNING THE DISCIPLINARY PROCESS

18VAC60-15-10. Recovery of disciplinary costs.

A. Assessment of cost for investigation of a disciplinary case.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant, the board may assess the hourly costs relating to investigation of the case by the Enforcement Division of the Department of Health Professions and, if applicable, the costs for hiring an expert witness and reports generated by such witness.

2. The imposition of recovery costs relating to an investigation shall be included in the order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of investigative costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average hourly cost for enforcement that is chargeable to investigation of complaints filed against its regulants and shall state those costs in a guidance document to be used in imposition of recovery costs. The average hourly cost multiplied times the number of hours spent in investigating the specific case of a respondent shall be used in the imposition of recovery costs.

B. Assessment of cost for monitoring a licensee or registrant.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant and in which terms and conditions have been imposed, the costs for monitoring of a licensee or registrant may be charged and shall be calculated based on the specific terms and conditions and the length of time the licensee or registrant is to be monitored.

2. The imposition of recovery costs relating to monitoring for compliance shall be included in the board order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of monitoring costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average costs for monitoring of certain terms and conditions, such as acquisition of continuing education, and shall set forth those costs in a guidance document to be used in the imposition of recovery costs.

C. Total of assessment. In accordance with § 54.1-2708.2 of the Code of Virginia, the total of recovery costs for investigating and monitoring a licensee or registrant shall not exceed \$5,000, but shall not include the fee for inspection of dental offices and returned checks as set forth in 18VAC60-21-40 or collection costs incurred for delinquent fines and fees.

18VAC60-15-20. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code [of Virginia], the board may delegate an informal fact-finding proceeding to an agency subordinate at the time a determination is made that probable cause exists that a practitioner may be subject to a disciplinary action. If delegation to a subordinate is not recommended at the time of the probable cause determination, delegation may be approved by the president of the board or his designee.

B. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

CHAPTER 21
REGULATIONS GOVERNING THE PRACTICE OF
DENTISTRY

Part I
General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

["AAOMS" means the American Association of Oral and Maxillofacial Surgeons.]

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

["Analgesia" means the diminution or elimination of pain in the conscious patient.]

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

["Conscious/moderate sedation" means a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation" means a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.]

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

["Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

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"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:]

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

[~~"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, or sublingual).~~

~~"General anesthesia" means a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug induced depression of neuromuscular function. Cardiovascular function may be impaired.]~~

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

[D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Conscious/moderate sedation" or "moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.]

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a [~~minimally depressed level of consciousness, produced by a pharmacological method, which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected~~ drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes "anxiolysis" (the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that

does not cause depression of consciousness) and includes "inhalation analgesia" (the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness)].

["~~Mobile dental facility~~" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.]

"Moderate sedation" (see the definition of conscious/moderate sedation).

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

["~~Portable dental operation~~" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.]

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-20. Address of record.

Each licensed dentist shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such licensee shall be validly given when mailed to the address of record on file with the board. Each licensee may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

18VAC60-21-30. Posting requirements.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by § 54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm, or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with § 54.1-2721 of the Code a dentist shall display [~~a his dental~~] license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes, or dispenses Schedules II through V controlled substances shall display his current registration with the federal Drug Enforcement Administration with his current active license.

D. A dentist who administers conscious/moderate sedation, deep sedation, or general anesthesia in a dental office shall display his sedation or anesthesia permit issued by the board [or certificate issued by AAOMS].

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	\$400
2. Dental license by credentials	\$500
3. Dental restricted teaching license	\$285
[4. Dental teacher's license	\$285
5. 4.] Dental [full-time] faculty license	[\$285 \$400
6. 5.] Dental temporary resident's license	\$60
[7. 6.] Restricted volunteer license	\$25
[8. 7.] Volunteer exemption registration	\$10
[9. 8.] Oral maxillofacial surgeon registration	\$175
[10. 9.] Cosmetic procedures certification	\$225
[11. 10.] Mobile clinic/portable operation	\$250
[12. 11.] Conscious/moderate sedation permit	\$100
[13. 12.] Deep sedation/general anesthesia permit	\$100

B. Renewal fees.

1. Dental license - active	\$285
2. Dental license - inactive	\$145
3. Dental temporary resident's license	\$35
4. Restricted volunteer license	\$15
5. Oral maxillofacial surgeon registration	\$175
6. Cosmetic procedures certification	\$100

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<u>7. Conscious/moderate sedation permit</u>	<u>\$100</u>	<u>8. Conscious/moderate sedation certification</u>	<u>\$75</u>
<u>8. Deep sedation/general anesthesia permit</u>	<u>\$100</u>	<u>9. Deep sedation/general anesthesia</u>	<u>\$75</u>
<u>C. Late fees.</u>		<u>10. Mobile clinic/portable operation</u>	<u>\$110]</u>
<u>1. Dental license - active</u>	<u>\$100</u>	<u>Part II</u>	
<u>2. Dental license - inactive</u>	<u>\$50</u>	<u>Standards of Practice</u>	
<u>3. Dental temporary resident's license</u>	<u>\$15</u>	<u>18VAC60-21-50. Scope of practice.</u>	
<u>4. Oral maxillofacial surgeon registration</u>	<u>\$55</u>	<u>A. A dentist shall only treat based on a bona fide dentist-patient relationship for medicinal or therapeutic purposes within the course of his professional practice consistent with the definition of dentistry in § 54.1-2710 of the Code, the provisions for controlled substances in the Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code), and the general provisions for health practitioners in the Code. A bona fide dentist-patient relationship is established when examination and diagnosis of a patient is initiated.</u>	
<u>5. Cosmetic procedures certification</u>	<u>\$35</u>	<u>B. For the purpose of prescribing controlled substances, the bona fide dentist-patient relationship shall be established in accordance with § 54.1-3303 of the Code.</u>	
<u>6. Conscious/moderate sedation permit</u>	<u>\$35</u>	<u>18VAC60-21-60. General responsibilities to patients.</u>	
<u>7. Deep sedation/general anesthesia permit</u>	<u>\$35</u>	<u>A. A dentist is responsible for conducting his practice in a manner that safeguards the safety, health, and welfare of his patients and the public by:</u>	
<u>D. Reinstatement fees.</u>		<u>1. Maintaining a safe and sanitary practice, including containing or isolating pets away from the treatment areas of the dental practice. An exception shall be made for a service dog trained to accompany its owner or handler for the purpose of carrying items, retrieving objects, pulling a wheelchair, alerting the owner or handler to medical conditions, or other such activities of service or support necessary to mitigate a disability.</u>	
<u>1. Dental license - expired</u>	<u>\$500</u>	<u>2. Consulting with or referring patients to other practitioners with specialized knowledge, skills, and experience when needed to safeguard and advance the health of the patient.</u>	
<u>2. Dental license - suspended</u>	<u>\$750</u>	<u>3. Treating according to the patient's desires only to the extent that such treatment is within the bounds of accepted treatment and only after the patient has been given a treatment recommendation and an explanation of the acceptable alternatives.</u>	
<u>3. Dental license - revoked</u>	<u>\$1000</u>	<u>4. Only delegating patient care and exposure of dental x-rays to qualified, properly trained and supervised personnel as authorized in Part III (18VAC60-21-110 et seq.) of this chapter.</u>	
<u>4. Oral maxillofacial surgeon registration</u>	<u>\$350</u>	<u>5. Giving patients at least 30 days written notice of a decision to terminate the dentist-patient relationship.</u>	
<u>5. Cosmetic procedures certification</u>	<u>\$225</u>	<u>6. Knowing the signs of abuse and neglect and reporting suspected cases to the proper authorities consistent with state law.</u>	
<u>E. Document fees.</u>			
<u>1. Duplicate wall certificate</u>	<u>\$60</u>		
<u>2. Duplicate license</u>	<u>\$20</u>		
<u>3. License certification</u>	<u>\$35</u>		
<u>F. Other fees.</u>			
<u>1. Returned check fee</u>	<u>\$35</u>		
<u>2. Practice inspection fee</u>	<u>\$350</u>		
<u>G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.</u>			
<u>[H. For the renewal of licenses, registrations, certifications, and permits in 2016, the following fees shall be in effect:</u>			
<u>1. Dentist - active</u>	<u>\$210</u>		
<u>2. Dentist - inactive</u>	<u>\$105</u>		
<u>3. Dental full-time faculty</u>	<u>\$210</u>		
<u>4. Temporary resident</u>	<u>\$25</u>		
<u>5. Dental restricted volunteer</u>	<u>\$10</u>		
<u>6. Oral/maxillofacial surgeon registration</u>	<u>\$130</u>		
<u>7. Cosmetic procedure certification</u>	<u>\$75</u>		

7. Accurately representing to a patient and the public the materials or methods and techniques to be used in treatment.

B. A dentist is responsible for conducting his financial responsibilities to patients and third party payers in an ethical and honest manner by:

1. Maintaining a listing of customary fees and representing all fees being charged clearly and accurately.
2. Making a full and fair disclosure to his patient of all terms and considerations before entering into a payment agreement for services.
3. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting procedures performed, dates of service, or status of treatment.
4. Making a full and fair disclosure to his patient of any financial incentives he received for promoting or selling products.
5. Not exploiting the dentist-patient relationship for personal gain related in nondental transactions.

18VAC60-21-70. Unprofessional practice.

A. A dentist shall not commit any act that violates provisions of the Code that reasonably relate to the practice of dentistry [~~and dental hygiene~~] including but not limited to:

1. Delegating any [dental] service or operation that requires the professional competence or judgment of a dentist [~~or dental hygienist~~] to any person who is not a licensed dentist or dental hygienist [or a registered dental assistant II].
2. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including but not limited to current regulations promulgated by the Virginia Department of Health.
3. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program.
4. Failing to maintain and dispense scheduled drugs as authorized by the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code) and the regulations of the Board of Pharmacy.
5. Failing to cooperate with an employee of the Department of Health Professions in the conduct of an investigation or inspection.

B. Sexual conduct with a patient, employee, or student shall constitute unprofessional conduct if:

1. The sexual conduct is unwanted or nonconsensual or
2. The sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC60-21-80. Advertising.

A. Practice limitation. A general dentist who limits his practice to a dental specialty or describes his practice by types of treatment shall state in conjunction with his name that he is a general dentist providing certain services (e.g., orthodontic services).

B. Fee disclosures. Any statement specifying a fee for a dental service that does not include the cost of all related procedures, services, and products that, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts and free offers. Discount and free offers for a dental service are permissible for advertising only when the nondiscounted or full fee [, if any,] and the final discounted fee are also disclosed in the advertisement. In addition, the time period for obtaining the discount or free offer must be stated in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee or free offer.

D. Retention of [~~broadcast~~] advertising. A prerecorded [or archived] copy of all advertisements [~~on radio or television~~] shall be retained for a [~~12 month~~ two-year] period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded [or archived] copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to this section is limited to procedures that are set forth in the American Dental Association's "Dental Procedures Codes," published in Current Dental Terminology in effect at the time the advertisement is issued.

F. Advertisements. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§ 54.1-2718 and 54.1-2720 of the Code are met.

G. False, deceptive, or misleading advertisement. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of subdivision 7 of § 54.1-2706 of the Code:

1. Publishing an advertisement that contains a material misrepresentation or omission of facts that causes an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation not deceptive;
2. Publishing an advertisement that fails to include the information and disclaimers required by this section; [~~or~~]

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3. Publishing an advertisement that contains a false claim of professional superiority, contains a claim to be a specialist, or uses any terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, [~~October 2009~~ November 2013]), or such guidelines or requirements as subsequently amended [; or]

4. Representation by a dentist who does not currently hold specialty certification that his practice is limited to providing services in such specialty area without clearly disclosing that he is a general dentist.

18VAC60-21-90. Patient information and records.

A. A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative [pursuant to § 54.1-2405 of the Code]; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

B. Every patient record shall include the following:

1. Patient's name on each page in the patient record;

2. A health history taken at the initial appointment that is updated (i) when analgesia, sedation, or anesthesia is to be administered; (ii) when medically indicated; and (iii) at least annually;

3. Diagnosis and options discussed, including the risks and benefits of treatment or [~~non-treatment~~ nontreatment] and the estimated cost of treatment options;

4. Consent for treatment obtained and treatment rendered;

5. List of drugs prescribed, administered, or dispensed and the route of administration, quantity, dose, and strength;

6. Radiographs, digital images, and photographs clearly labeled with patient name [and,] date taken [, and teeth identified];

7. Notation of each [treatment rendered, the] date of treatment and of the dentist, dental hygienist, and dental assistant II providing service;

8. Duplicate laboratory work orders that meet the requirements of § 54.1-2719 of the Code including the address and signature of the dentist;

9. Itemized patient financial records as required by § 54.1-2404 of the Code;

10. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-21-140 B; and

11. The information required for the administration of [~~moderate~~ conscious/moderate] sedation, deep sedation, and general anesthesia required in 18VAC60-21-260 D.

C. A licensee shall comply with the patient record confidentiality, release, and disclosure provisions of § 32.1-127.1:03 of the Code and shall only release patient information as authorized by law.

D. Records shall not be withheld because the patient has an outstanding financial obligation.

E. A reasonable cost-based fee may be charged for copying patient records to include the cost of supplies and labor for copying documents, duplication of radiographs and images, and postage if mailing is requested as authorized by § 32.1-127.1:03 of the Code. The charges specified in § 8.01-413 of the Code are permitted when records are subpoenaed as evidence for purposes of civil litigation.

F. When closing, selling, or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code for giving notice and providing records.

G. Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a [~~licensee~~ licensed dentist], are sent to the patients of record, or are destroyed.

H. Patient confidentiality must be preserved when records are destroyed.

18VAC60-21-100. Reportable events during or following treatment or the administration of sedation or anesthesia.

The treating dentist shall submit a written report to the board within 15 calendar days following an unexpected patient event that occurred intra-operatively or during the first 24 hours immediately following the patient's departure from his facility, resulting in either a physical injury or a respiratory, cardiovascular, or neurological complication that [was related to the dental treatment or service provided and that] necessitated admission of the patient to a hospital or in a patient death. [Any emergency treatment of a patient by a hospital that is related to sedation anesthesia shall also be reported.]

Part III

Direction and Delegation of Duties

18VAC60-21-110. Utilization of dental hygienists and dental assistants II.

A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under

direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services [,] additional dental hygienists to practice under general supervision in a free clinic or a public health program, or on a voluntary basis.

18VAC60-21-120. Requirements for direction and general supervision.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-21-110.

C. Dental hygienists acting within the scope of a license issued to them by the board under § 54.1-2722 or 54.1-2725 of the Code who teach dental hygiene in a CODA accredited program are exempt from this section.

D. Duties delegated to a dental hygienist under indirect supervision shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided.

E. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed 10 months from the date the dentist last performed a periodic examination of the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment under general supervision.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that a dentist may not be present, that only topical oral anesthetics can be administered to manage pain, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

F. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

18VAC60-21-130. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

18VAC60-21-140. [Dental Delegation to dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and [~~athermal~~ nonsurgical] lasers, with any sedation or anesthesia administered [~~by the dentist~~].

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

B. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with §§ 54.1-2722 D and 54.1-3408 J of the Code to be performed under general supervision:

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1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and [athermal nonsurgical] lasers with or without topical oral anesthetics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in 18VAC60-21-130, those restricted to indirect supervision in subsection A of this section, and those restricted to delegation to dental assistants II in 18VAC60-21-150.

18VAC60-21-150. Delegation to dental assistants II.

The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-30-120:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and
6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

18VAC60-21-160. Delegation to dental assistants I and II.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant I or II under [the] indirect [or under general] supervision [required in 18VAC60-21-120], with the exception of those listed as nondelegable in 18VAC60-21-130, those which may only be delegated to dental hygienists as listed in 18VAC60-21-140, and those which may only be delegated to a dental assistant II as listed in 18VAC60-21-150.

B. Duties delegated to a dental assistant under general supervision shall be [performed] under the direction [and indirect supervision] of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-21-170. Radiation certification.

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-21-180. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.
2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.
3. Conducting preliminary dental screenings in free clinics, public health programs, or a voluntary practice.

Part IV

Entry, Licensure, and Registration Requirements

18VAC60-21-190. General application provisions.

A. Applications for any dental license, registration, or permit issued by the board, other than for a volunteer exemption or for a restricted volunteer license, shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate [as specified in 18VAC60-21-200];
2. An original grade card documenting passage of all parts of the Joint Commission on National Dental Examinations; and
3. A current report from the [Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner U.S. Department of Health and Human Services National Practitioner] Data Bank (NPDB).

B. All applicants for licensure, other than for a volunteer exemption or for a restricted volunteer license, shall be required to attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry, dental hygiene, and dental assisting in Virginia.

C. If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.

D. Any application for a dental license, registration, or permit may be denied for any cause specified in § 54.1-111 or 54.1-2706 of the Code.

E. An application must include payment of the appropriate fee as specified in 18VAC60-21-40.

18VAC60-21-200. Education.

An applicant for [~~any type of~~ unrestricted] dental licensure shall be a graduate of and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental program of at least 24 months in any other specialty that includes a clinical component.

18VAC60-21-210. Qualifications for an unrestricted license.

A. Dental licensure by examination.

1. All applicants for licensure by examination shall have:

- a. Successfully completed all parts of the National Board Dental Examination given by the Joint Commission on National Dental Examinations; and
- b. Passed a dental clinical competency examination that is accepted by the board.

2. If a candidate has failed any section of a clinical competency examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

3. Applicants who successfully completed a clinical competency examination five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake an examination or take continuing education that meets the requirements of 18VAC60-21-250 unless they demonstrate that they have maintained clinical, ethical, and legal practice in another jurisdiction of the United States or in federal civil or military service for 48 of the past 60 months immediately prior to submission of an application for licensure.

B. Dental licensure by credentials. All applicants for licensure by credentials shall:

1. Have passed all parts of the National Board Dental Examination given by the Joint Commission on National Dental Examinations;
2. Have successfully completed a clinical competency examination acceptable to the board;
3. Hold a current, unrestricted license to practice dentistry in another jurisdiction of the United States and be certified to be in good standing by each jurisdiction in which a license is currently held or has been held; and

4. Have been in continuous clinical practice in another jurisdiction of the United States or in federal civil or military service for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in another jurisdiction of the United States (i) as a volunteer in a public health clinic, (ii) as an intern, or (iii) in a residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

18VAC60-21-220. Inactive license.

A. Any dentist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. With the exception of practice with a current restricted volunteer license as provided in § 54.1-2712.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry in Virginia.

B. An inactive license may be reactivated upon submission of the required application, which includes evidence of continuing competence and payment of the current renewal fee. To evaluate continuing competence the board shall consider (i) hours of continuing education that meet the requirements of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination that is accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

1. Continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours, must be included with the application. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation.

2. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code or who is unable to demonstrate continuing competence.

18VAC60-21-230. Qualifications for a restricted license.

A. Temporary permit for public health settings. A temporary permit shall be issued only for the purpose of allowing dental practice in a dental clinic operated by a state agency or a Virginia charitable organization as limited by § 54.1-2715 of the Code.

1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.

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2. A temporary permit will not be renewed unless the holder shows that extraordinary circumstances prevented the holder from taking the licensure examination during the term of the temporary permit.

[~~B.~~ Teacher's license. A teacher's license shall be issued to any dentist certified to be on the faculty of an accredited dental program who meets the entry requirements of § 54.1-2713 of the Code.

~~1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.~~

~~2. The holder of a teacher's license shall not practice intramurally or privately and shall not receive fees for service.~~

~~3. A teacher's license shall remain valid only while the holder is serving on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, and the license shall be null and void upon termination of full-time employment.~~

~~4. The dean of the dental school shall notify the board within five working days of such termination of employment.~~

~~C.~~ Full-time faculty B. Faculty] license. A faculty license shall be issued for the purpose of allowing dental practice as a [~~full-time~~] faculty member of an accredited dental program when the applicant meets the entry requirements of § 54.1-2713 of the Code.

~~1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.~~

~~2. The holder of a faculty license may practice intramurally and may receive fees for service but cannot practice privately.~~

~~3. A faculty license shall remain valid only while the holder is serving [~~full-time~~] on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving [~~full-time~~] on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of [~~full-time~~] employment.~~

~~4. The dean of the dental school shall notify the board within five working days of such termination of [~~full-time~~] employment.~~

[~~D.~~ C.] Temporary licenses to persons enrolled in advanced dental education programs. A dental intern, resident, or post-doctoral certificate or degree candidate shall obtain a temporary license to practice in Virginia.

1. The applicant shall have successfully completed a D.D.S. or D.M.D. degree program required for admission

to a clinical competency examination accepted by the board. Submission of a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received [,] is required.

2. The applicant shall submit a recommendation from the dean of the dental school or the director of the accredited advanced dental education program specifying the applicant's acceptance as an intern, resident, or post-doctoral certificate or degree candidate. The beginning and ending dates of the internship, residency, or post-doctoral program shall be specified.

3. The temporary license permits the holder to practice only in the hospital or outpatient clinics that are recognized parts of an advanced dental education program.

4. The temporary license may be renewed annually by June 30, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited advanced dental education program.

5. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency, or post-doctoral program is taken. The holder is prohibited from practicing outside of the advanced dental education program.

6. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

[~~E.~~ D.] Restricted volunteer license.

1. In accordance with § 54.1-2712.1 of the Code, the board may issue a restricted volunteer license to a dentist who:

a. Held an unrestricted license in Virginia or another [state U.S. jurisdiction] as a licensee in good standing at the time the license expired or became inactive;

b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

d. Has not failed a clinical examination within the past five years; and

e. Has had at least five years of clinical practice.

2. A person holding a restricted volunteer license under this section shall:

a. Only practice in public health or community free clinics that provide dental services to underserved populations;

b. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

c. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

d. Not be required to complete continuing education in order to renew such a license.

3. The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18VAC60-21-90.

4. A restricted volunteer license granted pursuant to this section shall expire on June 30 of the second year after its issuance or shall terminate when the supervising dentist withdraws his sponsorship.

5. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

[~~F. E.~~] Registration for voluntary practice by out-of-state licensees. Any dentist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, and the dates and location of the voluntary provision of services; and

4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of § 54.1-2701 of the Code.

Part V

Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall

automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Every person holding an active or inactive license [~~;~~ and those holding] a permit to administer conscious/moderate sedation, deep sedation, or general anesthesia [~~;~~ or a full-time faculty license] shall annually, on or before March 31, renew his license or permit. Every person holding a [~~teacher's~~ faculty] license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

C. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

D. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

E. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection G of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-21-250. Requirements for continuing education.

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

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1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia. [~~Continuing education credit may be earned for passage of the online Virginia Dental Law Exam.~~]

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation [with hands-on airway training for health care providers] or basic life support unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or conscious/moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. To be accepted for license renewal, continuing education programs shall be directly relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, and stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, business management, marketing, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subsection B of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association, their constituent and component/branch associations, and approved [continuing education] providers;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association, and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry, its constituent and component/branch associations, and approved [continuing education] providers;

7. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

8. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

9. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education;

10. A dental, dental hygiene, or dental assisting program or advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board [and its affiliate, the Dental Auxiliary Learning and Education Foundation]; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, [Council of Interstate Testing Agencies,] or Western Regional Examining Board) when serving as an examiner.

D. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted prior to renewal of the license.

E. A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

F. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the sponsor, and the amount of time earned. Documentation [~~must shall~~] be maintained for a period of four years following renewal.

G. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, [~~must shall~~]

submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

H. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

I. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part VI

Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. Application of Part VI. This part applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. Conscious/moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when conscious/moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. [~~Pre-operative~~ Preoperative] vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for or administered to a [~~child~~ patient] 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the

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patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management.

[1.] If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

[2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.]

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or [~~an approved, a~~] clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

[L. A dentist who allows the administration of general anesthesia, deep sedation, or conscious/moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.]

18VAC60-21-270. Administration of local anesthesia.

A dentist may administer or use the services of the following personnel to administer local anesthesia:

1. A dentist;

2. An anesthesiologist;

3. A certified registered nurse anesthetist under his medical direction and indirect supervision;

4. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older under his indirect supervision;

5. A dental hygienist to administer Schedule VI topical oral anesthetics under indirect supervision or under his order for such treatment under general supervision; or

6. A dental assistant or a registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under indirect supervision.

18VAC60-21-280. Administration of minimal sedation [(anxiolysis or inhalation analgesia)].

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:

1. Medications used, the appropriate dosages, the potential complications of administration, the indicators for

complications, and the interventions to address the complications.

2. Physiological effects of nitrous oxide, potential complications of administration, the indicators for complications, and the interventions to address the complications.

3. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for or administered to a [~~child~~ patient] 12 years of age or younger prior to his arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:

a. A dentist;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under his medical direction and indirect supervision;

d. A dental hygienist with the training required by 18VAC60-25-90 B or C only for administration of nitrous oxide/oxygen and under indirect supervision; or

e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-90 C to [parenterally] administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics;

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office or treatment facility, the dentist may only use the personnel listed in subdivision I of this subsection to administer local anesthesia.

D. Equipment requirements. A dentist who utilizes minimal sedation or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;

2. Source of delivery of oxygen under controlled positive pressure;

3. Mechanical (hand) respiratory bag;

4. Suction apparatus; and

5. Pulse oximeter.

E. Required staffing.

1. The treatment team for minimal sedation other than just inhalation of nitrous oxide/oxygen shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I; or

2. When only nitrous oxide/oxygen is administered for minimal sedation, a second person is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

F. Monitoring requirements.

1. Baseline vital signs to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to administration of sedation and prior to discharge.

2. Blood pressure, oxygen saturation, respiratory rate, [and] pulse [~~and heart rate~~] shall be monitored intraoperatively.

3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.

4. If nitrous oxide/oxygen is used, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

[5. If any other pharmacological agent is used in addition to nitrous oxide/oxygen and a local anesthetic, requirements for the induced level of sedation must be met.]

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to discharge.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

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18VAC60-21-290. Requirements for a conscious/moderate sedation permit.

A. After March 31, 2013, no dentist may employ or use conscious/moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer conscious/moderate sedation.

C. To determine eligibility for a conscious/moderate sedation permit, a dentist shall submit the following:

1. A completed application form indicating one of the following permits for which the applicant is qualified:

- a. Conscious/moderate sedation by any method;
- b. Conscious/moderate sedation by enteral administration only; or
- c. Temporary conscious/moderate sedation permit (may be renewed one time);

2. The application fee as specified in 18VAC60-21-40;

3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section, as applicable; and

4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer conscious/moderate sedation.

1. Administration by any method. A dentist may be issued a conscious/moderate sedation permit to administer by any method by meeting one of the following criteria:

- a. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or
- b. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in conscious/moderate sedation, and (iii) management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching the

Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred.

2. Enteral administration only. A dentist may be issued a conscious/moderate sedation permit to administer only by an enteral method if he has completed a continuing education program that meets the requirements of 18VAC60-21-250 and consists of not less than 18 hours of didactic instruction plus 20 [~~clinically oriented~~ clinically oriented] experiences in enteral or a combination of enteral and nitrous oxide/oxygen conscious/moderate sedation techniques. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred. The certificate of completion and a detailed description of the course content must be maintained.

3. A dentist who self-certified his qualifications in anesthesia and moderate sedation prior to January 1989 may [~~continue to administer only conscious/moderate sedation until September 14, 2012. After September 14, 2012,~~ be issued a temporary conscious/moderate sedation permit to continue to administer only conscious/moderate sedation until [~~one year from the effective date of regulations for sedation permits~~ May 7, 2015. After May 7, 2015,] a dentist shall meet the requirements for and obtain a conscious/moderate sedation permit to administer by any method or by enteral administration only.

E. Additional training required. Dentists who administer conscious/moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of [~~conscious/moderate~~ conscious/moderate] sedation.

A. Delegation of administration.

1. A dentist [~~not qualified~~ who does not hold a permit] to administer conscious/moderate sedation shall only use the services of a qualified dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed outpatient surgery center, a dentist [~~not qualified~~ who does not hold a permit] to administer conscious/moderate sedation shall use either a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.

2. A [~~qualified~~] dentist [who holds a permit] may administer or use the services of the following personnel to administer conscious/moderate sedation:

- a. A dentist with the training required by 18VAC60-21-290 D 2 to administer by an enteral method;

b. A dentist with the training required by 18VAC60-21-290 D 1 to administer by any method;

c. An anesthesiologist;

d. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D 1; or

e. A registered nurse upon his direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D 1.

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia. No sedating medication shall be prescribed for or administered to a ~~child~~ patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

4. Preceding the administration of conscious/moderate sedation, a ~~qualified~~ permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to ~~numb~~ anesthetize] the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

[5. A dentist who delegates administration of conscious/moderate sedation shall ensure that:

a. All equipment required in subsection B of this section is present, in good working order, and immediately available to the areas where patients will be sedated and treated and will recover; and

b. Qualified staff is on site to monitor patients in accordance with requirements of subsection D of this section.]

B. Equipment requirements. A dentist who administers conscious/moderate sedation shall ~~maintain~~ have available] the following equipment [in sizes for adults or children as appropriate for the patient being treated and shall maintain it] in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask [~~for children or adults, as appropriate for the patient being treated~~ or masks];

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes [~~for children or adults, or both,~~] with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Pulse oximetry;

6. Blood pressure monitoring equipment;

7. Pharmacologic antagonist agents;

8. Source of delivery of oxygen under controlled positive pressure;

9. Mechanical (hand) respiratory bag;

10. Appropriate emergency drugs for patient resuscitation;

11. Electrocardiographic monitor [if a patient is receiving parenteral administration of sedation or if the dentist is using titration];

12. Defibrillator;

13. Suction apparatus;

14. Temperature measuring device;

15. Throat pack; and

16. Precordial or pretracheal stethoscope.

C. Required staffing. At a minimum, there shall be a two person treatment team for conscious/moderate sedation. The team shall include the operating dentist and a second person to monitor the patient as provided in 18VAC60-21-260 K and assist the operating dentist as provided in 18VAC60-21-260 J, both of whom shall be in the operatory with the patient throughout the dental procedure. If the second person is a dentist, an anesthesiologist, or a certified registered nurse anesthetist who administers the drugs as permitted in 18VAC60-21-291 A, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

2. Blood pressure, oxygen saturation, [and] pulse [~~and heart rate~~] shall be monitored continually during the administration and recorded every five minutes.

3. Monitoring of the patient under conscious/moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge and vital signs have been taken and recorded.

Regulations

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. [~~Patients~~ The patient] shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

18VAC60-21-300. Requirements for a deep sedation/general anesthesia permit.

A. After March 31, 2013, no dentist may employ or use deep sedation or general anesthesia in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in [~~the American Association of Oral and Maxillofacial Surgeons (AAOMS)~~ AAOMS] and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. To determine eligibility for a deep sedation/general anesthesia permit, a dentist shall submit the following:

1. A completed application form;
2. The application fee as specified in 18VAC60-21-40;
3. A copy of the certificate of completion of a CODA accredited program or other documentation of training content which meets the educational and training qualifications specified in subsection C of this section; and
4. A copy of current certification in [Advanced Cardiac Life Support for Health Professionals () ACLS ()] or [Pediatric Advanced Life Support for Health Professionals () PALS ()] as required in subsection C of this section.

C. Educational and training qualifications for a deep sedation/general anesthesia permit.

1. Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or
2. Completion of an CODA accredited residency in any dental specialty that incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e., medical evaluation and management of patients) comparable to those set forth in the ADA's Guidelines for

Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred; and

3. Current certification in advanced resuscitative techniques with hands-on simulated airway and megacode training for health care providers, [including basic electrocardiographic interpretations,] such as courses in ACLS or PALS; and

4. Current training in the use and maintenance of the equipment required in 18VAC60-21-301.

18VAC60-21-301. Requirements for administration of deep sedation or general anesthesia.

A. Preoperative requirements. Prior to the appointment for treatment under deep sedation or general anesthesia the patient shall:

1. Be informed about the personnel and procedures used to deliver the sedative or anesthetic drugs to assure informed consent as required by 18VAC60-21-260 F.
2. Have a physical evaluation as required by 18VAC60-21-260 C.
3. Be given [~~pre-operative~~ preoperative] verbal and written instructions including any dietary or medication restrictions.

B. Delegation of administration.

1. A dentist [~~not qualified to administer deep sedation or general anesthesia~~ who does not meet the requirements of 18VAC60-21-300] shall only use the services of a [~~qualified~~] dentist [~~who does meet those requirements~~] or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In a licensed outpatient surgery center, a dentist [~~not qualified to administer deep sedation or general anesthesia~~] shall use either a [~~qualified~~] dentist [~~who meets the requirements of 18VAC60-20-300~~], an anesthesiologist, or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.

2. A [~~qualified~~] dentist [~~who meets the requirements of 18VAC60-20-300~~] may administer or use the services of the following personnel to administer deep sedation or general anesthesia:

- a. A dentist with the training required by 18VAC60-21-300 C;
- b. An anesthesiologist; or
- c. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-300 C.

3. Preceding the administration of deep sedation or general anesthesia, a [~~qualified~~] dentist [~~who meets the requirements of 18VAC60-20-300~~] may use the services of the following personnel under indirect supervision to administer local anesthesia to [~~numb~~ anesthetize] the injection or treatment site:

- a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or
- b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

C. Equipment requirements. A dentist who administers deep sedation or general anesthesia shall ~~maintain~~ have available the following equipment [in sizes appropriate for the patient being treated and shall maintain it] in working order and immediately available to the areas where patients will be sedated and treated and will recover:

- 1. Full face mask [~~for children or adults, as appropriate for the patient being treated~~ or masks];
- 2. Oral and nasopharyngeal airway management adjuncts;
- 3. Endotracheal tubes [~~for children or adults, or both,~~] with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;
- 4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;
- 5. Source of delivery of oxygen under controlled positive pressure;
- 6. Mechanical (hand) respiratory bag;
- 7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;
- 8. Appropriate emergency drugs for patient resuscitation;
- 9. EKG monitoring equipment;
- 10. Temperature measuring devices;
- 11. Pharmacologic antagonist agents;
- 12. External defibrillator (manual or automatic);
- 13. For intubated patients, an End-Tidal CO² monitor;
- 14. Suction apparatus;
- 15. Throat pack; and
- 16. Precordial or pretracheal stethoscope.

D. Required staffing. At a minimum, there shall be a three-person treatment team for deep sedation or general anesthesia. The team shall include the operating dentist, a second person to monitor the patient as provided in 18VAC60-21-260 K, and a third person to assist the operating dentist as provided in 18VAC60-21-260 J, all of whom shall be in the operatory with the patient during the dental procedure. If a second dentist, an anesthesiologist, or a certified registered nurse anesthetist administers the drugs as permitted in 18VAC60-21-301 B, such person may serve as the second person to monitor the patient.

E. Monitoring requirements.

- 1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include: temperature, blood pressure, pulse, [~~pulse~~

~~oximeter,~~ oxygen saturation, [and] respiration [~~and heart rate~~],

2. The patient's vital signs [and EKG readings] shall be monitored, recorded every five minutes, and reported to the treating dentist throughout the administration of controlled drugs and recovery. When depolarizing medications are administered, temperature shall be monitored constantly.

3. Monitoring of the patient [~~under~~ undergoing] deep sedation or general anesthesia is to begin prior to the administration of any drugs and shall take place continuously during administration, the dental procedure, and recovery from anesthesia. The person who administers the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

F. Emergency management.

- 1. A secured intravenous line must be established and maintained throughout the procedure.
- 2. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

G. Discharge requirements.

- 1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge and vital signs have been taken and recorded.
- 2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number [for the dental practice].
- 3. [~~Patients~~ The patient] shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

Part VII

Oral and Maxillofacial Surgeons

18VAC60-21-310. Registration of oral and maxillofacial surgeons.

Every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in § 54.1-2700 of the Code, shall register his practice with the board.

- 1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31.
- 2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.

Regulations

3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee.

4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the reinstatement fee.

18VAC60-21-320. Profile of information for oral and maxillofacial surgeons.

A. In compliance with requirements of § 54.1-2709.2 of the Code, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;

2. Names of dental or medical schools with dates of graduation;

3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;

4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;

5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;

6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;

7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients.

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialties obtained, and honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

18VAC60-21-330. Reporting of malpractice paid claims and disciplinary notices and orders.

A. In compliance with requirements of § 54.1-2709.4 of the Code, a dentist registered with the board as an oral and maxillofacial surgeon shall report in writing to the executive director of the board all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;

2. The total amount of the paid claim in United States dollars; and

3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to § 54.1-2400.2 G of the Code, shall be made available on the profile. Information shall also be posted indicating the availability of unadjudicated notices and orders that have been vacated.

18VAC60-21-340. Noncompliance or falsification of profile.

A. The failure to provide the information required in [subsection A of 18VAC60-20-260 18VAC60-21-320 A] may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC60-21-350. Certification to perform cosmetic procedures; applicability.

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to § 54.1-2709.1 of the Code. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training, and experience, certification may be granted to perform the following procedures for cosmetic treatment:

1. Rhinoplasty and other treatment of the nose;
2. Blepharoplasty and other treatment of the eyelid;
3. Rhytidectomy and other treatment of facial skin wrinkles and sagging;
4. Submental liposuction and other procedures to remove fat;
5. Laser resurfacing or dermabrasion and other procedures to remove facial skin irregularities;
6. Browlift (either open or endoscopic technique) and other procedures to remove furrows and sagging skin on the upper eyelid or forehead;
7. Platysmal muscle plication and other procedures to correct the angle between the chin and neck;
8. Otoplasty and other procedures to change the appearance of the ear; and
9. Application of injectable medication or material for the purpose of treating extra-oral cosmetic conditions.

18VAC60-21-360. Certification not required.

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;
2. Facial fractures, deformity, and wound treatment;
3. Repair of cleft lip and palate deformity;
4. Facial augmentation procedures; and
5. Genioplasty.

18VAC60-21-370. Credentials required for certification.

An applicant for certification shall:

1. Hold an active, unrestricted license from the board;
2. Submit a completed application and fee;
3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;
4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;
5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and
6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, submit:
 - a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and
 - b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education [; and]

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

18VAC60-21-380. Renewal of certification.

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit the renewal application and fee on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee. Reinstatement of a certification that has been lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the procedures for which the surgeon is certified and payment of a reinstatement fee.

Regulations

18VAC60-21-390. Quality assurance review for procedures performed by certificate holders.

A. On a schedule of no less than once every three years, the board shall conduct a random audit of charts for patients receiving cosmetic procedures that are performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organization as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding, or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

18VAC60-21-400. Complaints against certificate holders for cosmetic procedures.

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry. The Board of Medicine shall maintain the confidentiality of the complaint consistent with § 54.1-2400.2 of the Code.

[Part VIII
Mobile Dental Clinics]

18VAC60-21-410. Registration of a mobile dental clinic or portable dental operation.

A. An applicant for registration of a mobile dental facility or portable dental operation shall provide:

1. The name and address of the owner of the facility or operation and an official address of record for the facility or operation, which shall not be a post office address. Notice shall be given to the board within 30 days if there is a change in the ownership or the address of record for a mobile dental facility or portable dental operation;

2. The name, address, and license number of each dentist and dental hygienist or the name, address, and registration number of each dental assistant II who will provide dental services in the facility or operation. The identity and license or registration number of any additional dentists, dental hygienists, or dental assistants II providing dental services in a mobile dental facility or portable dental operation shall be provided to the board in writing prior to the provision of such services; and

3. The address or location of each place where the mobile dental facility or portable dental operation will provide dental services and the dates on which such services will be provided. Any additional locations or dates for the provision of dental services in a mobile dental facility or portable dental operation shall be provided to the board in writing prior to the provision of such services.

B. The information provided by an applicant to comply with subsection A of this section shall be made available to the public.

C. An application for registration of a mobile dental facility or portable dental operation shall include:

1. Certification that there is a written agreement for follow-up care for patients to include identification of and arrangements for treatment in a dental office that is permanently established within a reasonable geographic area;

2. Certification that the facility or operation has access to communication facilities that enable the dental personnel to contact assistance in the event of a medical or dental emergency;

3. Certification that the facility has a water supply and all equipment necessary to provide the dental services to be rendered in the facility;

4. Certification that the facility or operation conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, sanitation, zoning, flammability, and construction standards; and

5. Certification that the applicant possesses all applicable city or county licenses or permits to operate the facility or operation.

D. Registration may be denied or revoked for a violation of provisions of § 54.1-2706 of the Code.

18VAC60-21-420. Requirements for a mobile dental clinic or portable dental operation.

A. The registration of the facility or operation and copies of the licenses of the dentists and dental hygienists or registrations of the dental assistants II shall be displayed in plain view of patients.

B. Prior to treatment, the facility or operation shall obtain written consent from the patient or, if the patient is a minor or incapable of consent, his parent, guardian, or authorized representative.

C. Each patient shall be provided with an information sheet, or if the patient, his parent, guardian, or authorized agent has given written consent to an institution or school to have access to the patient's dental health record, the institution or school may be provided a copy of the information. At a minimum, the information sheet shall include:

1. Patient name, date of service, and location where treatment was provided;

- 2. Name of dentist or dental hygienist who provided services;
- 3. Description of the treatment rendered and tooth numbers, when appropriate;
- 4. Billed service codes and fees associated with treatment;
- 5. Description of any additional dental needs observed or diagnosed;
- 6. Referral or recommendation to another dentist if the facility or operation is unable to provide follow-up treatment; and
- 7. Emergency contact information.

D. Patient records shall be maintained, as required by 18VAC60-21-90, in a secure manner within the facility or at the address of record listed on the registration application. Records shall be made available upon request by the patient, his parent, guardian, or authorized representative and shall be available to the board for inspection and copying.

E. The practice of dentistry and dental hygiene in a mobile dental clinic or portable dental operation shall be in accordance with the laws and regulations governing such practice.

18VAC60-21-430. Exemptions from requirement for registration.

The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

- 1. All federal, state, or local governmental agencies; and
- 2. Dental treatment that is provided without charge to patients or to any third party payer.

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 (18VAC60-21)

- [Application Requirements for Faculty License \(rev. 6/13\)](#)
- [Application for Registration for Volunteer Practice \(rev. 8/08\)](#)
- [Requirements and Instructions for a Temporary Resident's License for Persons Enrolled in Advanced Dental Education Programs \(rev. 7/12\)](#)
- [Application for a Permit to Administer Conscious/Moderate Sedation \(rev. 10/12\)](#)
- [Application for a Permit to Administer Deep Sedation/General Anesthesia \(rev. 10/12\)](#)
- [Application for Certification to Perform Cosmetic Procedures \(rev. 3/12\)](#)

[Application Requirements for Restricted Dental Volunteer License \(rev. 11/10\)](#)

[Oral and Maxillofacial Surgeon Registration of Practice \(rev. 9/10\)](#)

[Application for Registration of a Mobile Dental Facility or Portable Dental Operation \(rev. 6/10\)](#)

[Oral and Maxillofacial Surgeon Reinstatement of Registration of Practice \(rev. 9/10\)](#)

[Instructions for Application for Reactivation of License \(rev. 8/10\)](#)

[Instructions for Reinstatement of License \(rev. 5/10\)](#)

[Instructions for Filing Online Application for Licensure by Examination or Credentials for Dentists \(rev. 9/12\)](#)

[Licensure Procedures for Application for Registration for Volunteer Practice \(rev. 5/08\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 5/08\)](#)

[DOCUMENTS INCORPORATED BY REFERENCE (18VAC60-21)

[Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, November 2013, American Dental Association \]](#)

CHAPTER 25

REGULATIONS GOVERNING THE PRACTICE OF DENTAL HYGIENE

Part I

General Provisions

18VAC60-25-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

- "Board"
- "Dental hygiene"
- "Dental hygienist"
- "Dentist"
- "Dentistry"
- "License"

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

- "Active practice" means clinical practice as a dental hygienist for at least 600 hours per year.
- "ADA" means the American Dental Association.
- "Analgesia" means the diminution or elimination of pain in the conscious patient.
- "CODA" means the Commission on Dental Accreditation of the American Dental Association.
- "Code" means the Code of Virginia.

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"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Direction" means the level of supervision (i.e., direct, indirect, or general) that a dentist is required to exercise with a dental hygienist or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of Regulations Governing the Practice of Dentistry.

["Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.]

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-25-20. Address of record; posting of license.

A. Address of record. Each licensed dental hygienist shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such licensee shall be validly given when mailed to the address of record on file with the board. Each licensee may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

B. Posting of license. In accordance with § 54.1-2727 of the Code, a dental hygienist shall display a [dental hygiene] license where it is conspicuous and readable by patients. If a licensee is employed in more than one office, a duplicate license obtained from the board may be displayed.

18VAC60-25-30. Required fees.

A. Application fees.

<u>1. License by examination</u>	<u>\$175</u>
<u>2. License by credentials</u>	<u>\$275</u>
<u>3. License to teach dental hygiene pursuant to § 54.1-2725 of the Code</u>	<u>\$175</u>
<u>4. Temporary permit pursuant to § 54.1-2726 of the Code</u>	<u>\$175</u>
<u>3. Restricted volunteer license</u>	<u>\$25</u>
<u>4. Volunteer exemption registration</u>	<u>\$10</u>

B. Renewal fees.

<u>1. Active license</u>	<u>\$75</u>
<u>2. Inactive license</u>	<u>\$40</u>
<u>3. License to teach dental hygiene pursuant to § 54.1-2725</u>	<u>\$75</u>
<u>4. Temporary permit pursuant to § 54.1-2726</u>	<u>\$75</u>

C. Late fees.

<u>1. Active license</u>	<u>\$25</u>
<u>2. Inactive license</u>	<u>\$15</u>
<u>3. License to teach dental hygiene pursuant to § 54.1-2725</u>	<u>\$25</u>
<u>4. Temporary permit pursuant to § 54.1-2726</u>	<u>\$25</u>

D. Reinstatement fees.

<u>1. Expired license</u>	<u>\$200</u>
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<u>2. Suspended license</u>	<u>\$400</u>
<u>3. Revoked license</u>	<u>\$500</u>
<u>E. Administrative fees.</u>	
<u>1. Duplicate wall certificate</u>	<u>\$60</u>
<u>2. Duplicate license</u>	<u>\$20</u>
<u>3. Certification of licensure</u>	<u>\$35</u>
<u>4. Returned check</u>	<u>\$35</u>
<u>F. No fee shall be refunded or applied for any purpose other than the purpose for which the fee was submitted.</u>	
<u>[G. For the renewal of licenses in 2016, the following fees shall be in effect:</u>	
<u>1. Dental hygienist - active</u>	<u>\$55</u>
<u>2. Dental hygienist - inactive</u>	<u>\$30</u>
<u>3. Dental hygienist restricted volunteer</u>	<u>\$10]</u>

Part II
Practice of Dental Hygiene

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect or general supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Administration of deep sedation or general anesthesia and conscious/moderate sedation;
7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in [~~Part IV (18VAC60-25-130 et seq.) of this chapter~~ 18VAC60-30-120];
8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and [~~athermal nonsurgical~~] lasers with any sedation or anesthesia administered [~~by the dentist~~].
2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.
3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planning, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and [~~athermal nonsurgical~~] lasers with or without topical oral anesthetics.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.
4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.
5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and

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6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

[F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 D of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the protocol adopted by the Commissioner of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012, which is hereby incorporated by reference.]

18VAC60-25-50. Utilization of dental hygienists and dental assistants.

A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic, a public health program, or a voluntary practice.

18VAC60-25-60. Delegation of services to a dental hygienist.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter, Part III (18VAC60-21-110 et seq.) of the Regulations Governing the Practice of Dentistry, and the Code.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-25-50.

C. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specified time period, not to exceed 10 months from the date the dentist last performed a periodic examination of the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment under general supervision.
2. The dental hygienist shall consent in writing to providing services under general supervision.
3. The patient or a responsible adult shall be informed prior to the appointment that a dentist may not be present, that only topical oral anesthetics can be administered to manage pain, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

D. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

18VAC60-25-70. Delegation of services to a dental assistant.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to [~~a~~ any] dental assistant under the direction of [~~a dentist or~~] a dental hygienist practicing under general supervision as permitted in subsection B of this section, with the exception of those listed as nondelegable and those [~~which~~ that] may only be delegated to dental hygienists as listed in 18VAC60-25-40 [and those that may only be delegated to a dental assistant II as listed in 18VAC60-21-150].

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-25-80. Radiation certification.

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-25-90. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.
2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.
3. Conducting preliminary dental screenings in free clinics, public health programs, or a voluntary practice.

18VAC60-25-100. Administration of controlled substances.

A. A licensed dental hygienist may:

1. Administer topical oral fluoride varnish to children aged six months to three years [~~of age~~] under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408 of the Code;

2. Administer topical Schedule VI drugs, including topical oral fluorides, topical oral anesthetics, and topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions pursuant to subsection J of § 54.1-3408 of the Code; and

3. If qualified in accordance with subsection B or C of this section, administer Schedule VI nitrous oxide/inhalation analgesia and, to persons 18 years of age or older, Schedule VI [~~parenterally~~] local anesthesia [~~parenterally~~] under the indirect supervision of a dentist.

B. To administer only nitrous oxide/inhalation analgesia, a dental hygienist shall:

1. Successfully complete a didactic and clinical course leading to certification in administration of nitrous oxide offered by a CODA accredited dental or dental hygiene program, which includes a minimum of eight hours in didactic and clinical instruction in the following topics:

- a. Patient physical and psychological assessment;
- b. Medical history evaluation;
- c. Equipment and techniques used for administration of nitrous oxide;
- d. Neurophysiology of nitrous oxide administration;
- e. Pharmacology of nitrous oxide;
- f. Recordkeeping, medical, and legal aspects of nitrous oxide;
- g. Adjunctive uses of nitrous oxide for dental patients; and
- h. Clinical experiences in administering nitrous oxide, including training with live patients.

2. Successfully complete an examination with a minimum score of 75% in the administration of nitrous oxide/inhalation analgesia given by the accredited program.

C. To administer [~~both nitrous oxide/inhalation analgesia and~~ local anesthesia parenterally] to patients 18 years of age or older, [~~parenterally local anesthesia,~~] a dental hygienist shall:

1. Successfully complete a didactic and clinical course leading to certification in administration of local anesthesia [~~and nitrous oxide/inhalation analgesia~~] that is offered by a CODA accredited dental or dental hygiene program, which includes a minimum of [~~36~~ 28] didactic and clinical hours in the following topics:

- a. Patient physical and psychological assessment;
- b. Medical history evaluation and recordkeeping;
- c. Neurophysiology of local anesthesia;

d. Pharmacology of local anesthetics and vasoconstrictors;

e. Anatomical considerations for local anesthesia;

f. Techniques for maxillary infiltration and block anesthesia;

g. Techniques for mandibular infiltration and block anesthesia;

h. Local and systemic anesthetic complications;

i. Management of medical emergencies; [and]

[~~j. Clinical experiences in maxillary and mandibular infiltration and block injections;~~

~~k. Pharmacology of nitrous oxide;~~

~~l. Adjunctive uses of nitrous oxide for dental patients; and~~

~~m. j.] Clinical experiences in administering [nitrous oxide and] local anesthesia injections on patients.~~

2. Successfully complete an examination with a minimum score of 75% in the [~~parenteral~~] administration of [~~nitrous oxide/inhalation analgesia and~~] local anesthesia given by the accredited program.

D. A dental hygienist who holds a certificate or credential issued by the licensing board of another jurisdiction of the United States that authorizes the administration of nitrous oxide/inhalation analgesia or local anesthesia may be authorized for such administration in Virginia if:

1. The qualifications on which the credential or certificate was issued were substantially equivalent in hours of instruction and course content to those set forth in subsections B and C of this section; or

2. If the certificate or credential issued by another jurisdiction was not substantially equivalent, the hygienist can document experience in such administration for at least 24 of the past 48 months preceding application for licensure in Virginia.

E. A dentist who provides direction for the administration of nitrous oxide/inhalation analgesia or local anesthesia shall ensure that the dental hygienist has met the qualifications for such administration as set forth in this section.

Part III

Standards of Conduct

18VAC60-25-110. Patient records; confidentiality.

A. A dental hygienist shall be responsible for accurate and complete information in patient records for those services provided by a hygienist or a dental assistant under direction to include the following:

- 1. Patient's name on each page in the patient record;
- 2. A health history taken at the initial appointment, which is updated when local anesthesia or nitrous oxide/inhalation analgesia is to be administered and when medically indicated and at least annually;

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3. Options discussed and oral or written consent for any treatment rendered with the exception of prophylaxis;

4. List of drugs administered and the route of administration, quantity, dose, and strength;

5. Radiographs, digital images, and photographs clearly labeled with the patient's name [~~and~~,] date taken [, and teeth identified];

6. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-25-60 C; and

7. Notation of each [treatment rendered,] date of treatment [,] and the identity of the dentist and the dental hygienist providing service.

B. A dental hygienist shall comply with the provisions of § 32.1-127.1:03 of the Code related to the confidentiality and disclosure of patient records. A dental hygienist shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the hygienist shall not be considered negligent or willful.

18VAC60-25-120. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code:

1. Fraudulently obtaining, attempting to obtain, or cooperating with others in obtaining payment for services.

2. Performing services for a patient under terms or conditions that are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use.

4. Committing any act in violation of the Code reasonably related to the practice of dentistry and dental hygiene.

5. Delegating any service or operation that requires the professional competence of a dentist or dental hygienist to any person who is not a licensee or registrant as authorized by this chapter.

6. Certifying completion of a dental procedure that has not actually been completed.

7. Violating or cooperating with others in violating provisions of Chapter 1 (§ 54.1-100 et seq.) or 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code or the Drug Control Act (§ 54.1-3400 et seq. of the Code).

Part IV Requirements for Licensure

18VAC60-25-130. General application requirements.

A. All applications for licensure by examination or credentials, temporary permits, or [~~teacher's faculty~~] licenses shall include:

1. Verification of completion of a dental hygiene degree or certificate from a CODA accredited program;

2. An original grade card from the National Board Dental Hygiene Examination issued by the Joint Commission on National Dental Examinations;

3. A current report from the [~~Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner~~ U.S. Department of Health and Human Services National Practitioner] Data Bank (NPDB); and

4. Attestation of having read and understood the laws and the regulations governing the practice of dentistry and dental hygiene in Virginia and of the applicant's intent to remain current with such laws and regulations.

B. If documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.

18VAC60-25-140. Licensure by examination.

A. An applicant for licensure by examination shall have:

1. Graduated from or have been issued a certificate by a CODA accredited program of dental hygiene;

2. Successfully completed the National Board Dental Hygiene Examination given by the Joint Commission on National Dental Examinations; and

3. Successfully completed a board-approved clinical competency examination in dental hygiene.

B. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. Applicants who successfully completed a board-approved examination five or more years prior to the date of receipt of their applications for licensure by the board may be required to retake a board-approved examination or take board-approved continuing education that meets the requirements of 18VAC60-25-190, unless they demonstrate that they have maintained clinical, unrestricted, and active practice in a jurisdiction of the United States for 48 of the past 60 months immediately prior to submission of an application for licensure.

18VAC60-25-150. Licensure by credentials.

An applicant for dental hygiene licensure by credentials shall:

1. Have graduated from or have been issued a certificate by a CODA accredited program of dental hygiene;
2. Be currently licensed to practice dental hygiene in another jurisdiction of the United States and have clinical, ethical, and active practice for 24 of the past 48 months immediately preceding application for licensure;
3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;
4. Have successfully completed a clinical competency examination substantially equivalent to that required for licensure by examination;
5. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code; and
6. Have successfully completed the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to the board.

18VAC60-25-160. Temporary permit; [~~teacher's~~ faculty] license.

A. Issuance of a temporary permit.

1. A temporary permit shall be issued only for the purpose of allowing dental hygiene practice as limited by § 54.1-2726 of the Code. An applicant for a temporary permit shall submit a completed application and verification of graduation from the program from which the applicant received the dental hygiene degree or certificate.
2. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking a board-approved clinical competency examination during the term of the temporary permit.

B. The board may issue a [~~teacher's~~ faculty] license pursuant to the provisions of § 54.1-2725 of the Code.

C. A dental hygienist holding a temporary permit or a [~~teacher's~~ faculty] license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

18VAC60-25-170. Voluntary practice.

A. Restricted volunteer license.

1. In accordance with § 54.1-2726.1 of the Code, the board may issue a restricted volunteer license to a dental hygienist who:
 - a. Held an unrestricted license in Virginia or another jurisdiction of the United States as a licensee in good standing at the time the license expired or became inactive;
 - b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry and dental hygiene in Virginia;

d. Has not failed a clinical examination within the past five years;

e. Has had at least five years of active practice in Virginia; another jurisdiction of the United States or federal civil or military service; and

f. Is sponsored by a dentist who holds an unrestricted license in Virginia.

2. A person holding a restricted volunteer license under this section shall:

a. Practice only under the direction of a dentist who holds an unrestricted license in Virginia;

b. Only practice in public health or community free clinics that provide dental services to underserved populations;

c. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

d. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

e. Not be required to complete continuing education in order to renew such a license.

3. A restricted volunteer license granted pursuant to this section shall expire on June 30 of the second year after its issuance or shall terminate when the supervising dentist withdraws his sponsorship.

4. A dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

B. Registration for voluntary practice by out-of-state licensees. Any dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a copy of a current license or certificate to practice dental hygiene;

3. Provide a complete record of professional licensure in each jurisdiction in the United States in which he has held a license or certificate;

4. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;

5. Pay a registration fee as required in 18VAC60-25-30; and

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6. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of § 54.1-2701 of the Code.

Part V

Licensure Renewal and Reinstatement

18VAC60-25-180. Requirements for licensure renewal.

A. An active dental hygiene license shall be renewed on or before March 31 each year. A [~~teacher's~~ faculty] license, a restricted volunteer license, or a temporary permit shall be renewed on or before June 30 each year.

B. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dental hygiene shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2726.1 of the Code, practicing in Virginia with an expired license may subject the licensee to disciplinary action by the board.

C. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee. The board may renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

18VAC60-25-190. Requirements for continuing education.

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or [~~conscious~~ conscious/moderate] sedation [~~or who administers nitrous oxide or nontopical local anesthesia~~] shall complete four hours every two years of approved continuing education directly related to [~~administration or~~] monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or
2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate

planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry and its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

10. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board [and its affiliate, the Dental Auxiliary Learning and Education Foundation]; [~~or~~

15. The American Academy of Dental Hygiene, its constituent and component/branch associations; or

~~15.~~ 16.] A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing

Agency, [Council of Interstate Testing Agencies,] or Western Regional Examining Board) when serving as an examiner.

D. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.

2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.

3. Licensees selected for audit [~~must~~ shall] provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation [~~must~~ shall] be maintained for a period of four years following renewal.

5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

18VAC60-25-200. Inactive license.

A. Any dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

B. With the exception of practice with a restricted volunteer license as provided in § 54.1-2726.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dental hygiene in Virginia.

C. An inactive dental hygiene license may be renewed on or before March 31 of each year.

18VAC60-25-210. Reinstatement or reactivation of a license.

A. Reinstatement of an expired license.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application and the reinstatement fee.

2. An applicant for reinstatement shall submit evidence of completion of continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which his license has not been active in Virginia, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

3. An applicant for reinstatement shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

4. The executive director may reinstate a license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reinstatement, and that the applicant has paid the reinstatement fee and any fines or assessments.

B. Reactivation of an inactive license.

1. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation.

2. An applicant for reactivation shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

3. The executive director may reactivate a license provided that the applicant can demonstrate continuing competence and that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reactivation.

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.

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FORMS (18VAC60-25)

[Instructions for Filing Online Application for Licensure by Examination or Endorsement for Dental Hygienists \(rev. 9/13\)](#)

[Licensure Procedures for Application for Registration for Volunteer Practice \(rev. 8/08\)](#)

[Instructions and Application for Reactivation of License \(rev. 2/10\)](#)

[Instructions and Application for Reinstatement of License \(rev. 5/10\)](#)

[Application Requirements and Application for Restricted Dental Hygiene Volunteer License \(rev. 11/10\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 5/08\)](#)

[DOCUMENTS INCORPORATED BY REFERENCE (18VAC60-25)

[Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012 \]](#)

CHAPTER 30 REGULATIONS GOVERNING THE PRACTICE OF DENTAL ASSISTANTS [H]

Part I General Provisions

18VAC60-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

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

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-30-60 and 18VAC60-30-70.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., [immediate,] direct, indirect or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of Regulations Governing the Practice of Dentistry.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

18VAC60-30-20. Address of record; posting of registration.

A. Address of record. Each registered dental assistant II shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such registrant shall be validly given when mailed to the address of record on file with the board. Each registrant may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

B. Posting of registration. A copy of the registration of a dental assistant II shall either be posted in an operatory in

which the person is providing services to the public or in the patient reception area where it is clearly visible to patients and accessible for reading. [If a dental assistant II is employed in more than one office, a duplicate registration obtained from the board may be displayed.]

18VAC60-30-30. Required fees.

- A. Initial registration fee. \$100
- B. Renewal fees.
 - 1. Dental assistant II registration - active \$50
 - 2. Dental assistant II registration - inactive \$25
- C. Late fees.
 - 1. Dental assistant II registration - active \$20
 - 2. Dental assistant II registration - inactive \$10
- D. Reinstatement fees.
 - 1. Expired registration \$125
 - 2. Suspended registration \$250
 - 3. Revoked registration \$300
- E. Administrative fees.
 - 1. Duplicate wall certificate \$60
 - 2. Duplicate registration \$20
 - 3. Registration verification \$35
 - 4. Returned check fee \$35

F. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

[G. For the renewal of a dental assistant II registration in 2016, the fees shall be \$35.]

Part II
Practice of Dental Assistants II

18VAC60-30-40. Practice of dental hygienists and dental assistants II under direction.

A. A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic, a public health program, or a voluntary practice.

B. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter, Part III (18VAC60-21-110 et seq.) of the Regulations Governing the Practice of Dentistry, and the Code.

18VAC60-30-50. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and subsections J and K of 18VAC60-21-260;
7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

18VAC60-30-60. Delegation to dental assistants II.

The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-30-120:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and
6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

18VAC60-30-70. Delegation to dental assistants I and II.

A. Duties appropriate to the training and experience of [the any] dental assistant and the practice of the supervising dentist may be delegated to a dental assistant I or II under [the] indirect [or under general] supervision [required in 18VAC60-21-120], with the exception of those listed as

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nondelegable in 18VAC60-30-50, those which may only be delegated to dental hygienists as listed in 18VAC60-21-140, and those which may only be delegated to a dental assistant II as listed in 18VAC60-30-60.

B. Duties delegated to [a any] dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-30-80. Radiation certification.

[~~No dentist or dental hygienist shall permit a person not otherwise licensed by this board to~~ A dental assistant I or II shall not] place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-30-90. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.
2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.
- [3. Conducting preliminary dental screenings in free clinics, public health programs, or a voluntary practice.]

Part III Standards of Conduct

18VAC60-30-100. Patient records; confidentiality.

A. A dental assistant II shall be responsible for accurate and complete information in patient records for those services provided by the assistant under direction to include the following:

1. Patient's name on each page in the patient record;
2. Radiographs, digital images, and photographs clearly labeled with the patient name [~~and~~,] date taken [, and teeth identified]; and
3. Notation of each [treatment rendered,] date of treatment and the identity of the dentist, the dental hygienist, or the dental assistant providing service.

B. A dental assistant shall comply with the provisions of § 32.1-127.1:03 of the Code related to the confidentiality and disclosure of patient records. A dental assistant shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is

required or permitted by applicable law or beyond the control of the assistant shall not be considered negligent or willful.

18VAC60-30-110. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code:

1. Fraudulently obtaining, attempting to obtain, or cooperating with others in obtaining payment for services.
2. Performing services for a patient under terms or conditions that are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.
3. Misrepresenting to a patient and the public the materials or methods and techniques used or intended to be used.
4. Committing any act in violation of the Code reasonably related to dental practice.
5. Delegating any service or operation that requires the professional competence of a dentist, dental hygienist, or dental assistant II to any person who is not authorized by this chapter.
6. Certifying completion of a dental procedure that has not actually been completed.
7. Violating or cooperating with others in violating provisions of Chapter 1 (§ 54.1-100 et seq.) or 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code or the Drug Control Act (§ 54.1-3400 et seq. of the Code).

Part IV

Entry Requirements for Dental Assistants II

[18VAC60-30-115. General application requirements.

A. All applications for registration as a dental assistant II shall include:

1. Evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board that was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control;
2. Verification of completion of educational requirements set forth in 18VAC60-30-120; and
3. Attestation of having read and understood the laws and regulations governing the practice of dentistry and dental assisting in Virginia and of the applicant's intent to remain current with such laws and regulations.]

18VAC60-30-120. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall

be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II, a person shall complete the following requirements from an educational [institution that maintains a] program [in dental assisting, dental hygiene, or dentistry] accredited by CODA:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed online.

2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations and pulp capping procedures;

b. At least 60 hours of placing and shaping composite resin restorations and pulp capping procedures;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

[18VAC60-30-130. Registration certification. (Reserved.)

~~A. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National~~

~~Board or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control.~~

~~B. All applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for registration by the board may be required to retake the board approved examinations or take board approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for registration.~~

~~C. All applicants for registration as a dental assistant II shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.]~~

18VAC60-30-140. Registration by endorsement as a dental assistant II.

A. An applicant for registration by endorsement as a dental assistant II shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association;

2. Be currently authorized to perform expanded duties as a dental assistant in each jurisdiction of the United States;

3. Hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-30-120 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-30-60 for at least 24 of the past 48 months preceding application for registration in Virginia.

B. An applicant shall also:

1. Be certified to be in good standing from each jurisdiction of the United States in which he is currently registered, certified, or credentialed or in which he has ever held a registration, certificate, or credential;

2. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code; and

3. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

Part V

Requirements for Renewal and Reinstatement

18VAC60-30-150. Registration renewal requirements.

A. Every person holding an active or inactive registration shall annually, on or before March 31, renew his registration.

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Any person who does not return the completed form and fee by the deadline shall be required to pay an additional late fee.

B. The registration of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid and his practice as a dental assistant II shall be illegal. Practicing in Virginia with an expired registration may subject the registrant to disciplinary action by the board.

C. In order to renew registration, a dental assistant II shall be required to maintain and attest to current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

D. A dental assistant II shall also be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

E. Following the renewal period, the board may conduct an audit of registrants to verify compliance. Registrants selected for audit [~~must shall~~] provide original documents certifying current certification.

[~~F. Continuing education hours required by board order shall not be used to satisfy the requirement for registration renewal or reinstatement.~~]

18VAC60-30-160. Inactive registration.

[A.] Any dental assistant II who holds a current, unrestricted registration in Virginia may upon a request on the renewal application and submission of the required fee be issued an inactive registration. The holder of an inactive registration shall not be entitled to perform any act requiring registration to practice as a dental assistant II in Virginia.

[B.] An inactive registration may be reactivated upon submission of evidence of current certification from the [Dental Assisting National Board or a] national credentialing organization recognized by the American Dental Association. [An applicant for reactivation shall also provide evidence of continuing clinical competence, which may include (i) documentation of active practice in another state or in federal service or (ii) a refresher course offered by a CODA accredited educational program.

C.] The board reserves the right to deny a request for reactivation to any registrant who has been determined to have committed an act in violation of § 54.1-2706 of the Code.

18VAC60-30-170. Registration reinstatement requirements.

A. The board shall reinstate an expired registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of 18VAC60-30-150, provided that no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and 18VAC60-30-110.

B. A dental assistant II who has allowed his registration to lapse or who has had his registration suspended or revoked must submit evidence of current certification from [the Dental Assisting National Board or] a credentialing organization recognized by the American Dental Association to reinstate his registration.

C. The executive director may reinstate such expired registration provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and 18VAC60-30-110.

[D. An applicant for reinstatement shall provide evidence of continuing clinical competence, which may include (i) documentation of active practice in another state or in federal service or (ii) a refresher course offered by a CODA accredited educational program.]

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FORMS (18VAC60-30)

[Application for Registration to Practice as a Dental Assistant II \(rev. 2/12\)](#)

[Application Requirements for Registration to Practice as a Dental Assistant II \(rev. 2/12\)](#)

[Form A - Certification of Dental Assisting Education \(rev. 2/12\)](#)

[Form B \(rev. 10/11\)](#)

[Form C - Certification of Authorization to Perform Expanded Duties as a Dental Assistant \(rev. 3/11\)](#)

VA.R. Doc. No. R10-2362; Filed October 2, 2015, 11:43 a.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing 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 Board of Nursing will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-271).

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

Effective Date: December 2, 2015.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 522 of the 2015 Acts of Assembly, the amendment includes the statutory authorization to issue a restricted volunteer license for registered or practical nurses.

18VAC90-20-271. Registration Restricted volunteer license and registration for voluntary practice by out-of-state licensees.

A. A registered or practical nurse may be issued a restricted volunteer license and may practice in accordance with provisions of § 54.1-3011.01 of the Code of Virginia.

B. Any licensed nurse who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide evidence of current, unrestricted licensure in a U.S. jurisdiction;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide an attestation from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 11 of § 54.1-3001 of the Code of Virginia.

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 (18VAC90-20)

- [Application for Licensure by Endorsement -- Registered Nurse \(rev. 5/11\)](#)
- [Instructions for Licensure by Endorsement -- Registered Nurse \(rev. 5/11\)](#)
- [Instructions for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 5/11\)](#)
- [Application for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 6/11\)](#)

- [Verification of Clinical Practice -- Licensure by Endorsement \(rev. 1/10\)](#)
- [Instructions and Application for Licensure by Examination for Registered Nurses \(rev. 8/11\)](#)
- [Instructions and Application for Licensure by Examination - Licensed Practical Nurse \(rev. 8/11\)](#)
- [Instructions and Application for Licensure by Repeat Examination for Registered Nurse \(rev. 8/11\)](#)
- [Instructions and Application for Licensure by Repeat Examination for Licensed Practical Nurse \(rev. 8/11\)](#)
- [Instructions and Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries \(rev. 6/11\)](#)
- [Instructions and Application for Licensure by Examination for Registered Nurses Educated in Other Countries \(rev. 6/11\)](#)
- [Declaration of Primary State of Residency for Purposes of the Nurse Licensure Compact \(rev. 6/11\)](#)
- [Instructions for Application for Reinstatement -- Registered Nurse \(rev. 10/10\)](#)
- [Application for Reinstatement -- Registered Nurse \(rev. 6/11\)](#)
- [Instructions for Application for Reinstatement -- Licensed Practical Nurse \(rev. 2/10\)](#)
- [Application for Reinstatement of License as a Licensed Practical Nurse \(rev. 6/11\)](#)
- [Instructions and Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation \(rev. 6/11\)](#)
- [Instructions and Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation \(rev. 6/11\)](#)
- [License Verification Form \(rev. 10/09\)](#)
- [Procedure \(rev. 3/10\) and Application for Registration as a Clinical Nurse Specialist \(rev. 6/11\)](#)
- [Application for Reinstatement of Registration as a Clinical Nurse Specialist \(rev. 6/11\)](#)
- [Application to Establish a Nursing Education Program \(rev. 6/11\)](#)
- [Agenda and Survey Visit Report -- Registered Nurse Education Program \(rev. 4/08\)](#)
- [Agenda and Survey Visit Report -- Practical Nurse Education Program \(rev. 4/08\)](#)
- [NCLEX Survey Visit Report \(rev. 4/08\)](#)
- [Application for Registration for Volunteer Practice \(rev. 7/07\)](#)
- [Sponsor Certification for Volunteer Registration \(rev. 8/08\)](#)
- [Verification of Supervised Clinical Practice -- Registered Nurse Provisional License \(eff. 8/13\)](#)

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[Notification of Intent to Supervise Clinical Practice -- Registered Nurse Provisional License \(eff. 8/13\)](#)

[Application for Restricted Volunteer License \(eff. 7/2015\)](#)

VA.R. Doc. No. R16-4316; Filed October 5, 2015, 9:27 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing 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 Board of Nursing will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-190, 18VAC90-20-200, 18VAC90-20-215, 18VAC90-20-230).

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

Effective Date: January 1, 2016.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 307 of the 2015 Acts of Assembly, the amendment includes the statutory requirement for a criminal background check for every applicant for a nursing license.

Part III

Licensure and Practice

18VAC90-20-190. Licensure by examination.

A. The board shall authorize the administration of examinations for registered nurse licensure and examinations for practical nurse licensure.

B. A candidate shall be eligible to take the NCLEX examination (i) upon receipt by the board of the completed application, fee and an official transcript from the nursing education program; and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

2. Arrange for the board to receive an official transcript from the nursing education program which shows either:

a. That the degree or diploma has been awarded and the date of graduation or conferral; or

b. That all requirements for awarding the degree or diploma have been met and specifies the date of conferral.

3. File a new application and reapplication fee if:

a. The examination is not taken within 12 months of the date that the board determines the applicant to be eligible; or

b. Eligibility is not established within 12 months of the original filing date.

D. The minimum passing standard on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to determine eligibility for licensure or reexamination.

F. Practice of nursing pending receipt of examination results.

1. A graduate who has filed a completed application for licensure in Virginia and has received an authorization letter issued by the board may practice nursing in Virginia from the date of the authorization letter. The period of practice shall not exceed 90 days between the date of successful completion of the nursing education program, as documented on the applicant's transcript, and the publication of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in subdivision 1 of this subsection shall use the designation "R.N. Applicant" or "L.P.N. Applicant" on a nametag or when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following receipt of the authorization letter from the board or who have failed the examination.

G. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required board application and reapplication fee in order to establish eligibility for reexamination.

3. Applicants who have failed the examination for licensure in another U.S. jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice

nursing in Virginia until the requisite license has been issued.

18VAC90-20-200. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the same requirements for registered nurse or practical nurse licensure as those seeking initial licensure in Virginia. Applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours, as specified in 18VAC90-20-120, may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with an active, unencumbered license in another U.S. jurisdiction.

1. A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination (CRNE) and holds an unrestricted license in Canada.

2. An applicant for licensure by endorsement who has passed a licensing examination other than NCLEX may only be issued a single state license to practice in Virginia.

B. An applicant for licensure by endorsement who has submitted a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia and the required application and fee and submitted the required form to the appropriate credentialing agency for verification of licensure may practice for 30 days upon receipt of an authorization letter from the board. If an applicant has not received a Virginia license within 30 days and wishes to continue practice, he shall seek an extension of authorization to practice by submitting a request and evidence that he has requested verification of licensure.

C. If the application is not completed within one year of the initial filing date, the applicant shall submit a new application and fee.

18VAC90-20-215. Provisional licensure of applicants for licensure as registered nurses.

A. Pursuant to § 54.1-3017.1 of the Code of Virginia, the board may issue a provisional license to an applicant for the purpose of meeting the 500 hours of supervised, direct (hands-on) client care required of an approved registered nurse education program.

B. Such applicants for provisional licensure shall submit:

1. A completed application for licensure by examination and fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia;

2. Documentation that the applicant has successfully completed a nursing education program; and

3. Documentation of passage of NCLEX in accordance with 18VAC90-20-190.

C. Requirements for hours of supervised clinical experience in direct client care with a provisional license.

1. To qualify for licensure as a registered nurse, direct, hands-on hours of supervised clinical experience shall include the areas of adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing. Supervised clinical hours may be obtained in employment in the role of a registered nurse or without compensation for the purpose of meeting these requirements.

2. Hours of direct, hands-on clinical experience obtained as part of the applicant's nursing education program and noted on the official transcript shall be counted towards the minimum of 500 hours and in the applicable areas of clinical practice.

3. For applicants with a current, active license as an LPN, 150 hours of credit shall be counted towards the 500-hour requirement.

4. 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that:

a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and

b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.

5. An applicant for licensure shall submit verification from a supervisor of the number of hours of direct client care and the areas in which clinical experiences in the role of a registered nurse were obtained.

D. Requirements for supervision of a provisional licensee.

1. The supervisor shall be on site and physically present in the unit where the provisional licensee is providing clinical care of clients.

2. In the supervision of provisional licensees in the clinical setting, the ratio shall not exceed two provisional licensees to one supervisor at any given time.

3. Licensed registered nurses providing supervision for a provisional licensee shall:

a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board;

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b. Hold an active, unrestricted license or multistate licensure privilege and have at least two years of active clinical practice as a registered nurse prior to acting as a supervisor;

c. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the supervisee's clinical knowledge and skills;

d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients; and

e. Document on a form provided by the board the frequency and nature of the supervision of provisional licensees to verify completion of hours of clinical experience.

E. The provisional status of the licensee shall be disclosed to the client prior to treatment and shall be indicated on identification worn by the provisional licensee.

F. All provisional licenses shall expire six months from the date of issuance and may be renewed for an additional six months. Renewal of a provisional license beyond the limit of 12 months shall be for good cause shown and shall be approved by the board. A request for extension of a provisional license beyond 12 months shall be made at least 30 days prior to its expiration.

18VAC90-20-230. Reinstatement of lapsed licenses or license suspended or revoked.

A. A nurse whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse whose license has lapsed for more than one renewal period shall:

1. File a reinstatement application and pay the reinstatement fee; ~~and~~

2. Provide evidence of completing at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reinstatement; and

3. Submit a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

C. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was lapsed.

D. A nurse whose license has been suspended or revoked by the board may apply for reinstatement by filing a reinstatement application, fulfilling requirements for continuing competency as required in subsection B of this section, and paying the fee for reinstatement after suspension or revocation. A nurse whose license has been revoked may

not apply for reinstatement sooner than three years from entry of the order of revocation.

E. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

VA.R. Doc. No. R16-4513; Filed October 5, 2015, 9:33 a.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to § 54.1-3443 D of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: December 2, 2015.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments place six compounds into Schedule I of the Drug Control Act. The added compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy places the following substances in Schedule I of the Drug Control Act:

1. Cannabimimetic agents:

a. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other names: ADB-CHMINACA, MAB-CHMINACA);

b. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other name: 5-fluoro-AMB);

c. 1-naphthalenyl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other name: NM-2201); and

d. 1-(4-fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other name: FUB-144).

2. Substituted cathinones:

a. 4-bromomethcathinone (other name: 4-BMC); and

b. 4-chloromethcathinone (other name: 4-CMC).

~~B.~~ The placement of drugs in this subsection shall remain in effect until February 11, 2017, unless enacted into law in the Drug Control Act.

~~B.~~ Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Acetyl fentanyl (other name: desmethyl fentanyl).
2. Etizolam.
3. 4-Iodo-2, 5-dimethoxy-N-[(2-hydroxyphenyl) methyl]-benzeneethanamine (other name: 25I-NBOH).
4. Cannabimimetic agent:
 - 1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl) indole (MAM-2201).
5. Substituted cathinones:
 - a. Alpha-Pyrrolidinohexiophenone (other name: alpha-PHP); and
 - b. Alpha-Pyrrolidinoheptiophenone (other name: PV8).

~~The placement of drugs listed in this subsection shall remain in effect until June 1, 2017, unless enacted into law in the Drug Control Act.~~

VA.R. Doc. No. R16-4527; Filed October 13, 2015, 12:22 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Withdrawal of Proposed Regulation

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-102).**

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

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals has WITHDRAWN the proposed amendment to 18VAC160-20, published in [31:20 VA.R. 1762-1764 June 1, 2015](#). The proposed amendment would have increased the license renewal fee for regulants of the board. Due to changes in the board's financial position, a fee adjustment is no longer necessary at this time.

Agency Contact: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

VA.R. Doc. No. R14-3972; Filed October 16, 2015, 4:57 p.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. 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 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.

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations.**

Agency Contact: Trisha L. Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, email trisha.henshaw@dpor.virginia.gov

FORMS (18VAC160-20)

~~Continuing Professional Education (CPE) Certificate of Completion, 19CPE (rev. 5/2009)~~

~~Application for Training Course Approval, 19CRS (rev. 5/2009)~~

~~Experience Verification Form, 19EXP (eff. 7/2009)~~

~~Experience Verification Application - Onsite Sewage System Applicants Only, A436-19EXP (rev. 10/2012)~~

~~Education & Training Substitution Form, 19ET_SUB (eff. 7/2009)~~

~~Licensure Fee Notice, 19FEE (eff. 7/2009)~~

~~Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC (eff. 7/2009)~~

~~Interim Onsite Sewage System Installer License Application, 1931_32LIC (eff. 7/2009)~~

~~Interim Onsite Sewage System Operator License Application, 1933_34LIC (eff. 7/2009)~~

~~Onsite Soil Evaluator Exam & License Application, 1940_41EXLIC (eff. 7/2009)~~

[Continuing Professional Education \(CPE\) Application Certificate of Completion, A436-19CPE-v2 \(rev. 5/2013\)](#)

[Provisional Description & Experience Verification Application - Provisional Applicants Only, A436-1955_65PEXP-v3 \(eff. 12/2014\)](#)

[Training Course Approval Application, A465-19CRS \(rev. 5/2013\)](#)

[Experience Verification Application - Onsite Sewage System Applicants Only, A436-19OSSEXP-v3 \(rev. 1/2013\)](#)

[Experience Verification Application - Waterworks and Wastewater Works Operators Applicants Only, A436-19WWEXP-v3 \(eff. 1/2014\)](#)

[Out-of-State Facility Description & Experience Verification Application, A436-19STATE_EXP-v3 \(eff. 4/2015\)](#)

[Education & Training Substitution Form, A436-19EDTR-v3 \(eff. 1/2014\)](#)

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[Onsite Soil Evaluator License Application, A465-1940LIC-v1 \(eff. 1/2014\)](#)

[Onsite Sewage System Installer License Application, A465-1944LIC-v2 \(eff. 10/2015\)](#)

~~[Onsite Sewage System Operator Exam & License Application, 1942_43EXLIC \(eff. 7/2009\)](#)~~

[Onsite Sewage System Operator License Application, A465-1942LIC-v1 \(eff. 1/2014\)](#)

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, A436-1944WAIV-v4 \(eff. 8/2015\)](#)

~~[Onsite Sewage System Operator Exam & License Application, A465-1942EXLIC v3, \(eff. 7/2013\)](#)~~

[Provisional Waterworks Operator License Application, A436-1955PLIC-v1 \(eff. 1/2014\)](#)

[Provisional Wastewater Works Operator License Application, A436-1965PLIC-v2 \(rev.1/2014\)](#)

[Waterworks & Wastewater Works Operator - Upgrade Provisional License Application, A436-1955_65UPG-v2 \(rev. 1/2014\)](#)

[Waterworks Operator License Application, A436-1955LIC-v2 \(rev. 1/2014\)](#)

[Wastewater Works Operator License Application, A436-1965LIC-v1 \(eff. 1/2014\)](#)

[Waterworks Operator - Upgrade License Application, A436-1955UPGLIC-v1 \(eff. 1/2014\)](#)

[Wastewater Works Operator - Upgrade License Application, A436-1965UPGLIC-v1 \(eff. 1/2014\)](#)

[Waiver of Examination - Conventional Onsite Sewage System Operator License Application, A436-1942WAIV-v1 \(eff. 8/2014\)](#)

VA.R. Doc. No. R16-4224; Filed October 7, 2015, 1:24 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 49 (2015)

Expanding Registered Apprenticeships in Virginia

Importance of the Initiative

By 2022, about 500,000 new jobs will be created in Virginia, and over 930,000 workers will be needed to replace Virginia's retiring workforce. As many as 50% to 65% of those jobs will be at the technician and trades level, and offering pathways to a successful standard of living. These are jobs that require postsecondary education and training, but generally not a college degree. Registered Apprenticeship is a nationally recognized, tried and true strategy to prepare a skilled workforce for these technician level jobs. Registered Apprenticeship provides a portable credential of skills development and workplace experience to Virginians who attain a Certificate of Completion and Journeyworker Card, while also providing businesses with a pipeline of skilled workers with higher productivity and retention rates, and a return on investment for their employers. This is why my administration is committed to dramatically expanding Registered Apprenticeship in Virginia.

Administered by the Virginia Department of Labor and Industry (VDOLI), Registered Apprenticeship combines on-the-job learning and apprenticeship-related instruction, with the latter often delivered by a community college or career and technical education center. Registered Apprenticeship instills loyalty in workers and decreases employee turnover because a Registered Apprenticeship provides valuable, life long career benefits including: certifications and licenses that matter to business, and an opportunity to simultaneously learn and earn-with a graduated pay scale that recognizes increased skill attainment.

The U.S. Department of Labor recognizes over 900 occupations as appropriate for setting up a Registered Apprenticeship including: skilled trades, business and professional services, information technology, and education and human services occupations. No other training program to prepare job seekers includes the balance of on the job and classroom learning as does Registered Apprenticeship.

A Registered Apprenticeship Program for State Agencies

State agencies, like private employers, should reap the benefits of Registered Apprenticeship to better recruit, retain, and strengthen the skills of state workers beginning their public service careers. Currently, robust Registered Apprenticeship programs preparing skilled trade workers, office administrators, early childhood providers, groundskeepers, and other occupations are used by a number of local government entities. State governments can use Registered Apprenticeship to cultivate highly skilled workers in those occupations for which qualified applicants can be challenging to recruit.

Given these benefits to employers and employees, I therefore direct VDOLI to initiate a program that will expand enrollment of state agencies as Registered Apprenticeship sponsors through fiscal incentives to support the cost of apprenticeship-related instruction. Pursuant to this Executive Order, VDOLI and other identified state agencies shall take the following actions:

1. By January 1, 2016, VDOLI will produce, in coordination with the Virginia Department of Human Resources Management (VDHRM), guidelines and an application for state agencies to register an apprenticeship program and seek a state incentive to cover the costs of apprenticeship-related instruction. During FY 2016, up to \$120,000 will be available through VDOLI to state agencies to support apprenticeship-related instruction. Completed applications for incentive funds to cover the related instruction costs of registered apprentices (who are also state employees) will be accepted by VDOLI on a first-come, first-served basis. VDOLI will consult with interested state agencies to identify occupations for a Registered Apprenticeship program. VDOLI will report monthly to the Secretary of Commerce and Trade on the status of agency enrollments as Registered Apprenticeship sponsors and of agency applications for funding to support apprenticeship-related instruction.

2. By January 1, 2016, to ensure that state agencies are fully apprised of the options for apprenticeship-related instruction, the Governor's Chief Workforce Advisor will convene VDOLI, the Virginia Community College System (VCCS), Virginia Department of Education (VDOE) and VDHRM to plan and prepare an information strategy, including online resources, to guide state agencies in selecting an apprenticeship-related instruction provider. Information will identify all financial aid resources available to support registered apprenticeships, including the new funding program for agencies to support apprenticeship-related instruction.

New Resources to Support Private Sector Registered Apprenticeships

To increase the number of Registered Apprenticeship programs in key industry sectors (such as Information Technology, Cyber Security, and Professional and Business Services) that have not traditionally sponsored registered apprentices, the Commonwealth of Virginia will offer fiscal incentives to businesses who register apprentices in such key industry sectors to cover the costs of apprenticeship-related instruction. Specifically, I direct the identified agencies to take the following actions:

1. By January 1, 2016, VDOLI, in consultation with the Governor's Chief Workforce Advisor, will release guidelines and applications for fiscal support of apprenticeship-related instruction to private sector

companies interested in sponsoring Registered Apprenticeship(s) in the targeted occupations. During FY 2016, up to \$280,000 will be available through VDOLI to private sector companies to support apprentice-related instruction for registered apprentices in the targeted occupations. Completed applications for incentive funds to cover apprenticeship-related instruction will be accepted by VDOLI on a first-come, first-served basis. In consultation with the Governor's Chief Workforce Advisor, VDOLI may include additional occupations.

2. By January 1, 2016, to further assist all private sector employers in sponsoring a Registered Apprenticeship program, VDOLI, VCCS and Virginia Employment Commission (VEC), will develop policies and procedures through which businesses who are Registered Apprenticeship sponsors can apply for available federal or state training funds, available through Virginia's Workforce System, to support apprenticeship-related instruction.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 6th Day of October, 2015.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 50 (2015)

Executive Action to Prevent Gun Violence

Importance of the Issue:

Like too many communities around the nation, cities and counties across the Commonwealth have experienced the devastating effects of gun violence. While Virginians will never forget the tragic massacre of young promise that occurred at Virginia Tech in 2007, or the most recent murders of two young journalists on air in Roanoke, gun violence has tragically impacted families and communities from Lee County to the Eastern Shore, from Loudoun to Halifax, in ways that have changed those communities forever.

Through the efforts of many Virginians within both the public and private sectors, our Commonwealth has taken great steps to limit access to guns to those who have mental health issues, previous felony convictions, or a current protective order. But, as events around our nation and Virginia's own recent history show, more must be done.

It has been estimated that nearly 40% of all guns sold in America are sold by private, unlicensed sellers either online or through gun shows. These sellers are not required by federal or state law to perform any background checks before transferring a firearm. While law enforcement can appropriately monitor compliance by Federal Firearm

Licenses ("FFLs"), unlicensed sellers face little to no regulation in their selling of firearms. Without appropriate safeguards, this large gap in our firearm regulatory scheme gives criminals and other persons incapable of passing a background check easy access to firearms. In a state where "open carry" is lawful, our law enforcement personnel have no way to determine if a person openly carrying a firearm is in lawful possession or is a convicted criminal taking advantage of a gap in our regulatory system.

The ease of access to firearms by criminals and others intent on harm is even more problematic when viewed in light of the general open access to our public facilities. Every day, over 60,000 Virginians report to work in state government buildings across the Commonwealth to provide services to their fellow Virginians. Our citizens rely on open access to these facilities to address their personal and professional needs. Whether it is to incorporate a business, renew a driver's license, apply for a job, seek a permit, or just to attend a public hearing, our government facilities are essential to allowing our citizens access to their government representatives. Allowing "open carry" in these facilities by individuals who may not lawfully possess a firearm exposes our state employees and fellow citizens to unnecessary risk.

There is no magic solution to curbing gun violence. As the National Institute of Justice noted, no single approach will prevent gun violence: "To reduce gun violence, a sustained program that addresses both demand and supply is needed. A successful intervention will have elements of federal-local law enforcement collaboration, community involvement, targeted intervention tactics and continuous program evaluation."

My administration, in consultation with the Office of the Attorney General, along with federal and local law enforcement, is committed to doing everything within our power to prevent gun violence in our communities. Accordingly, pursuant to my authority under Article V of the Constitution of Virginia and under the Code of Virginia, I am ordering the following:

I. Establish Joint Task Force to Prosecute Gun Crimes

There shall be established a Joint Task Force to Prosecute Gun Crimes (the "Task Force"), to be led by the Attorney General of Virginia and the Secretary of Public Safety and Homeland Security. The Task Force shall be comprised of representatives from state and local law enforcement and prosecutors, the Virginia State Police, and the Department of Criminal Justice Services, along with federal partners, and shall develop strategies and coordinate efforts to strictly enforce existing gun laws under state and federal law. Following from successful law enforcement efforts in the past, the Task Force will put special emphasis on enforcing two key protections under the law:

- 1) that only licensed firearms dealers engage in the business of selling firearms
- 2) that persons prohibited from owning firearms are prevented from obtaining them

The Task Force will rely principally on the investigatory powers of state and federal law enforcement agencies, in partnership with local agencies, in order to pursue effective enforcement actions, using both criminal and civil proceedings, to enforce the gun laws.

Additionally, I am asking the Task Force to identify those areas within our regulatory system that significantly hamper law enforcement's ability to effectively pursue illegal transfers of weapons and how our Commonwealth can be better situated to address these areas.

II. Authorize Attorney General to Coordinate and Bring Criminal Cases Against Firearms Law Offenders

In order to facilitate enforcement of the existing gun laws, I am invoking my authority under § 2.2-511 and asking the Attorney General to coordinate these prosecutorial efforts and bring such cases as he may deem most appropriate, in order to protect the citizens of the Commonwealth from illegal firearms sales. I also reserve the right to initiate any other legal proceedings that may be necessary to protect the citizens of the Commonwealth from illegal firearms sales.

III. Establish Tip Line for Illegal Gun Activity

The Virginia State Police coordinates the criminal background checks used by licensed firearm dealers to confirm that prohibited individuals are not able to purchase firearms. To aid in enforcement of the gun laws already on the books, I hereby order the Virginia State Police to establish a Tip Line that will enable citizens to report violations of the gun laws and to collect a reward for any successful prosecutions flowing from the information provided.

IV. Trace Guns Used in Crime

Gun violence occurs every day in the Commonwealth, oftentimes by individuals who should never have had a gun in the first place. In order to aid in the Task Force's work, I hereby direct the Virginia State Police to set a policy to request tracing of every gun used in the commission of a crime in the Commonwealth, working with local and federal law enforcement to accomplish this goal.

Obtaining this information will be critical to enforcing the gun laws already on the books in Virginia.

V. Encourage Judges and Prosecutors to Seek Gun Forfeiture in Felony and Other Cases

Cases of domestic violence in which there is access to firearms often end in needless tragedy. The power to prevent gun purchases, however, is not effective when the domestic abuser or felon already has access to guns.

Accordingly, in consultation with the Office of the Attorney General, we will be working, through training and advocacy, to encourage prosecutors and judges to use their broad power in both criminal sentencing and in domestic violence protective orders to require persons prohibited from obtaining guns to forfeit guns they may already possess.

VI. Banning Firearms in State Government Buildings

We must take every precaution to protect our citizens and state employees from gun violence. We cannot wait until a tragedy occurs to decide to address it. Prevention requires us to address areas of concern before they are realized. Accordingly, I hereby declare that it is the policy of the Commonwealth that open carry of firearms shall be prohibited in offices occupied by executive branch agencies, unless held by law enforcement, authorized security, or military personnel authorized to carry firearms in accordance with their duties. Within 30 days of the date of this Executive Order, the Director of the Department of General Services (DGS) shall issue guidance prohibiting carrying weapons openly in offices occupied by executive branch agencies.

I further order the Director of DGS, within 30 days of the date of this Executive Order, to propose regulations to ban the carrying of concealed weapons in offices occupied by executive branch agencies, unless held by law enforcement, authorized security, or military personnel authorized to carry firearms in accordance with their duties.

Conclusion

All Virginians have the right to feel safe and secure in going about their daily lives. The Governor of Virginia has no more sacred responsibility than to see to it that the public is safe, using all legal means to secure this right. My administration, in partnering with the Attorney General of Virginia, along with federal and local law enforcement, today renews and re-emphasizes this commitment. Working together, it is my hope that these initiatives will help reduce senseless gun violence in Virginia so that we may all feel more safe and secure living in our great Commonwealth.

Effective Date of this Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect, unless otherwise amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this Fifteenth day of October 2015.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

COMMON INTEREST COMMUNITY BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC48-10, Public Participation Guidelines

18VAC48-20, Condominium Regulations

18VAC48-40, Time-Share Regulations

18VAC48-50, Common Interest Community Manager Regulations

18VAC48-60, Common Interest Community Management Information Fund Regulations

18VAC48-70, Common Interest Community Ombudsman Regulations

The comment period begins November 2, 2015, and ends November 23, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Trisha Henshaw, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

October 1, 2015

Administrative Letter 2015-11

To: All Insurers Licensed and Recognized in Virginia

Re: Assessment Practices and Procedures
Replacement of Administrative Letter 2014-01

The provisions of this administrative letter replace Administrative Letter 2014-01.

The State Corporation Commission Bureau of Insurance (Bureau) will require new Maintenance Assessment and special assessments reporting forms beginning with 2015. The Virginia Assessment Report & Voucher consolidates all previous assessment reports and the payment voucher. The required forms will consist of 1) the Virginia Assessment Report & Voucher and 2) the Adjustments to Schedule T Premium, which reflects adjustments necessary to determine the assessable premium amount. The new forms and one check representing all amounts due from the insurer shall be filed on March 1 each year.

The required forms will continue to be provided via the Bureau's website (<http://www.scc.virginia.gov/boi/co/assess/filing.aspx>), showing the specific assessments required of each insurer. Each insurer is responsible for consulting this online resource to determine which assessments it is required to pay. In addition, the Bureau will provide the new forms to approved software companies. Should an insurer utilize such software in completing the forms, note that the insurer will be held responsible if the software companies' applications do not properly identify the required assessments.

Checks submitted without the Virginia Assessment Report & Payment Voucher cannot be processed by the bank and will be returned to the insurer for proper filing. Late payment and filing penalties plus interest will apply to all submissions and resubmissions made after the March 1 due date. Payments received for assessments that are not required will not be refunded. If you do not have access to the website, please call the Administrative Assessment Unit at (804) 371-9096 prior to the due date to request the forms.

Questions regarding this letter may be directed to Keith D. Kelley, Administrative Assessment Supervisor, State Corporation Commission, telephone (804) 371-9333, or email keith.kelley@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

* * *

October 1, 2015

Administrative Letter 2015-12

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia and Interested Parties

RE: Credit Life Insurance and Credit Accident and Sickness Insurance Premium Rates
Effective January 1, 2016

On August 7, 2015, the Virginia State Corporation Commission (the "Commission") issued an Order Adopting Adjusted Prima Facie Rates for the Triennium Commencing January 1, 2016, Case No. INS-2015-00022. All insurers licensed to market credit life insurance or credit accident and sickness insurance in Virginia were mailed a copy of the Order and the adopted rates on August 18, 2015. Pursuant to § 38.2-3725 D and E of the Code of Virginia, the adjusted prima facie rates for the triennium commencing January 1, 2016 will remain in effect until January 1, 2019.

Each company marketing credit life insurance or credit accident and sickness insurance in Virginia must submit the rates and refund formulas applicable to the upcoming triennium to the Bureau for approval if its rates currently on file exceed the adjusted prima facie rates set forth in Case No. INS-2015-00022. Each filing should include the following information:

- The specific single premium and monthly outstanding balance (MOB) rates and rate formulas, and examples of the rate formulas;
- All refund formulas, including examples;
- Any other information required to document the development of the rates and refund formulas;
- The date of previously approved formulas;
- The form number to which each rate or formula will apply; and
- A description of the referenced forms.

A request for approval of a deviated premium rate or rates to be effective on or after January 1, 2016 may be included as part of the filing referenced above. It should be noted that previously approved deviated premium rates can only be used through December 31, 2015, in accordance with § 38.2-3728 C 1 of the Code of Virginia.

The filing requirement checklists for credit life insurance and credit accident and sickness insurance filings may be found on the Bureau's website at http://www.scc.virginia.gov/boi/co/health/lh_check.aspx.

My staff will review filings as promptly as possible; however, companies that delay making filings until after December 1, 2015 cannot be assured that our review will be completed by January 1, 2016. Any insurer with rates currently on file that exceed the adjusted prima facie rates set forth in Case No. INS-2015-00022 that has not received the Bureau's approval of its revised rates and refund formulas on or before January 1, 2016 must cease marketing credit life insurance or credit accident and sickness insurance in Virginia as of January 1, 2016 and must cease charging premiums for existing MOB contracts as of January 1, 2016 until such date that it has received the Commission's approval, as noted above.

Any questions with regards to any of the above matters should be directed to Amanda G. McCauley, Senior Insurance Market Examiner, Life and Health Division, telephone (804) 371-0034, or email amanda.mccauley@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intent - Hecate Energy Cherrydale LLC Solar Small Renewable Energy Project

Hecate Energy Cherrydale LLC, has submitted to the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Eastville (Northampton County), Virginia, pursuant to Virginia regulation 9VAC15-60.

The project will be located on a 236-acre parcel on the southeast corner of Seaside Road and Cherrydale Drive in Northampton County, Virginia and will consist of 79,800 x 310-watt panels plus 10 x 2-megawatt inverters which will provide no less than 20 MWs of nameplate capacity.

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

Notice of Intent - Hecate Energy Clarke County LLC Solar Small Renewable Energy Project

Hecate Energy Clarke County LLC, has submitted to the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) to be located near Berryville in Clarke County, Virginia, pursuant to Virginia regulation 9VAC15-60.

The project will be located on a 235-acre parcel located at the northeast corner of Double Tollgate Road and Highway 522 in Clarke County, Virginia and will consist of 79,800 x 310-watt panels plus 10 x 2-megawatt inverters which will provide no less than 20 MWs of nameplate capacity.

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

STATE BOARD OF HEALTH

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is conducting a periodic review and small business impact review of **12VAC5-405, Rules Governing Private Review**

General Notices/Errata

Agents. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 2, 2015, and ends November 23, 2015.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Susan Puglisi, Policy Analyst, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email susan.puglisi@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on October 6, 2015. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number One Hundred Twenty-One (15)

Virginia Lottery's "Premium Registration Coupon" Final Rules for Operation (effective September 15, 2015)

Director's Order Number One Hundred Twenty-Two (15)

Virginia Lottery's "eXTRA Holiday Promotion" Final Rules for Operation (effective November 3, 2015)

Director's Order Number One Hundred Twenty-Three (15)

Sheetz FY16 Plan Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on November 1, 2015, and shall remain in full force and effect until ninety (90) days after the conclusion of the

final incentive program, unless otherwise extended by the Director)

Director's Order Number One Hundred Twenty-Four (15)

Virginia's Computer-Generated Game Lottery "FastPlay \$15,000 Payday" Final Rules for Game Operation (effective September 14, 2015)

Director's Order Number One Hundred Twenty-Five (15)

Virginia's Computer-Generated Game Lottery "FastPlay Blackjack Showdown" Final Rules for Game Operation (effective September 14, 2015)

Director's Order Number One Hundred Twenty-Six (15)

Virginia's Computer-Generated Game Lottery "FastPlay Halo-Win" Final Rules for Game Operation (effective September 14, 2015)

Director's Order Number One Hundred Twenty-Seven (15)

Virginia's Computer-Generated Game Lottery "FastPlay Wild Cherry Bingo" Final Rules for Game Operation (effective September 14, 2015)

Director's Order Number One Hundred Twenty-Eight (15)

Virginia Lottery's "Redskins Champions Club Retailer Promotion" Final Rules for Operation (effective September 18, 2015)

Director's Order Number One Hundred Twenty-Nine (15)

Virginia Lottery's "Power Up Promotion" Final Rules for Operation (effective October 4, 2015)

Director's Order Number One Hundred Thirty-One (15)

Virginia Lottery's "Bank A Million How To Play Coupon" Final Rules for Operation (effective September 1, 2015)

Director's Order Number One Hundred Thirty-Three (15)

"Grocery Out-of-Stock Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on November 1, 2015, 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 One Hundred Thirty-Four (15)

"Holiday Lucky 15% Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on December 1, 2015, 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 One Hundred Thirty-Five (15)

Virginia's Instant Game Lottery 1575 "GREEN" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Thirty-Six (15)

Virginia's Instant Game Lottery 1608 "WHOLE LOTTA \$100'S" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Thirty-Seven (15)

Virginia's Instant Game Lottery 1550 "JEWEL 7's" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Thirty-Eight (15)

Virginia's Instant Game Lottery 1619 "CROSSWORD TRIPLER" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Thirty-Nine (15)

Virginia's Instant Game Lottery 1573 "HOT DICE" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty (15)

Certain Virginia FastPlay Games; End of Games - Virginia Lottery's FastPlay Summer Sizzler (79 15); Virginia Lottery's FastPlay \$15,000 Jackpot (28 15); Virginia Lottery's FastPlay Bingo Blast (27 15); Virginia Lottery's FastPlay Blackjack Cash (30 15) (This Director's Order is effective nunc pro tunc to end of system day, September 14, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Forty-One (15)

Virginia's Instant Game Lottery 1596 "HAPPY HOLIDAYS" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty-Two (15)

Virginia's Instant Game Lottery 1598 "HOLIDAY DOUBLE MATCH" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty-Three (15)

Virginia's Instant Game Lottery 1599 "MERRY MONEY" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty-Four (15)

Virginia's Instant Game Lottery 1597 "SEASON'S GREETINGS" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty-Five (15)

Virginia's Instant Game Lottery 1595 "SEASON'S WINNINGS" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Forty-Eight (15)

Virginia's Instant Game Lottery 1585 "\$3,500,000 ULTIMATE MILLIONS" Final Rules for Game Operation (effective September 20, 2015)

Director's Order Number One Hundred Fifty-Four (15)

Certain Virginia Game Promotion; Promotion Correction - Redskins Champions Club Promotion (75 15) (effective September 25, 2015)

STATE WATER CONTROL BOARD

FY 2016 Virginia Clean Water Revolving Loan Fund Intended Use Plan and Project Priority List

Introduction: Section 606(c) of the Water Quality Act of 1987 requires the Commonwealth to develop an Intended Use Plan (IUP) that identifies the uses of its Clean Water Revolving Loan Fund and to prepare a list of projects targeted for financial assistance with those funds. Following public comment and final board action, the list of targeted projects for financial assistance becomes the Commonwealth's yearly Clean Water Revolving Loan Project Priority List (PPL) in the IUP.

FY 2016 Program Development: On May 29, 2015, staff of the Department of Environmental Quality (DEQ) solicited applications from the Commonwealth's localities and wastewater authorities as well as potential stormwater management, land conservation, and Brownfield remediation clientele. July 17, 2015, was established as the deadline for receiving applications. Based on this solicitation, DEQ received 15 wastewater improvement applications requesting \$62,175,702; two applications for land conservation projects (totaling \$5,310,000); one Brownfield remediation application (1,000,000); and one stormwater management application for an additional \$1,705,275, bringing the total amount requested to \$70,190,977.

All 15 wastewater applications were evaluated in accordance with the program's funding distribution criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the project's readiness-to-proceed. The one stormwater application was reviewed in accordance with the board's priority ranking criteria for stormwater projects. All wastewater/stormwater applications are considered to be of good quality and should provide significant water quality and environmental improvement. The Brownfield remediation project was also determined to provide direct improvement to groundwater quality and is being recommended for funding. The two land conservation applications were reviewed using the board's land conservation loan funding prioritization criteria and the staff also received input from the Department of Conservation and Recreation in accordance with the board's guidelines and state law.

General Notices/Errata

The list of applications is shown by project type in priority funding order based on the board's prioritization criteria. Note that each project type (wastewater, stormwater, land conservation) has separate priority ranking point systems that are not intended to be numerically compared from one type to the other. All applications are considered to be of good quality and should provide significant water quality and environmental improvement. Based on these considerations, on October 1, 2015, the board approved the staff recommendation to target funding for \$70,190,977 for all 19 projects and present the proposed PPL and IUP for public comment. The list of applications and the target funding list are available at <http://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance/FY2016AnnualSolicitation.aspx>.

Public Participation: The board is presenting its draft list of targeted FY 2016 loan recipients and Intended Use Plan for public review and comment. A public meeting will be held at 3 p.m. on Tuesday, November 10, 2015, in the Department of Environmental Quality's 2nd Floor Conference Room, 629 East Main Street, Richmond, VA 23219. The public review and comment period will end immediately following the public meeting. Comments or questions should be directed to the contact person below.

Contact Information: Walter Gills, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email walter.gills@deq.virginia.gov.

Proposed Enforcement Action for Boyd Farm, LLC

An enforcement action has been proposed for Boyd Farm, LLC for violations of state water control law that occurred in Goochland County, Virginia. A description of the proposed action is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from November 2, 2015, through December 2, 2015.

Proposed Consent Special Order for River Homes, Inc.

An enforcement action has been proposed for River Homes, Inc. for violations at the Coan Reaches Subdivision in Northumberland County, Virginia. The State Water Control Board proposes to issue a special order by consent to River Homes, Inc. to address noncompliance with the State Water Control Law, regulations, and the General VPDES Permit for Discharges of Stormwater from Construction Activities. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 2, 2015, to December 2, 2015.

Proposed Consent Order for Riverton Associates, LLC

An enforcement action has been proposed for Riverton Associates, LLC for violations of State Water Control Law at the intersection of Robius Road (SR 711) and Winterfield Road (SR714) in Powhatan County. The consent order describes a settlement to resolve unpermitted wetland and stream impacts associated with Winterfield Development. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@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 November 2, 2015, to December 2, 2015.

Total Maximum Daily Load for the Mattaponi River and Tributaries

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for the Mattaponi River and tributaries. The following stream segments are listed on the § 303(d) TMDL Priority List and Report as impaired for the recreation use due to exceedances of the state's water quality standards for bacteria.

Stream Name	Location	Bacteria Impairment Length (miles)	Upstream Limit	Downstream Limit
Brock Run	Spotsylvania County	2.56	Aunt Sarah Spring Creek	Ni River
Chapel Creek	King and Queen County	4.44	Beaver Branch	Mattaponi River
Doctors Creek	Caroline County	2.32	Tanyard Swamp	Maracossic Creek
Gladly Run	Spotsylvania County	9.30	headwaters	Po River
Maracossic Creek	Caroline and King and Queen Counties	4.21	Beverly Run	Mattaponi River
Mat River	Spotsylvania County	2.30	~0.3 mi upstream from Route 647	Ta River
Matta River	Spotsylvania and Caroline Counties	11.89	~0.5 mi upstream from Route 646	Poni River

Mattaponi River	Caroline County	3.20	unnamed tributary draining from Goose Pond	Polecat Creek
Motto River	Caroline County	1.80	~0.4 mi upstream from Route 1	~0.2 mi downstream from I-95.
Po River	Spotsylvania and Caroline Counties	7.21	~2.7 mi upstream from Route 1	Ni River
Polecat Creek	Caroline County	5.31	headwaters	Stevens Mill Run
Poni River	Caroline County	3.21	~0.7 mi upstream from Route 606	Matta River
Reedy Creek	Caroline County	9.39	headwaters	Route 301
		3.30	Route 301	Reedy Millpond
Root Swamp	King and Queen County	7.83	headwaters	Beverly Run

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report, and Virginia state law requires implementation plans for areas with TMDLs. A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of WLAs associated with this TMDL.

A final public meeting on the development of the TMDL for bacteria for these stream segments will be held in two different locations on two different dates:

Meeting in Spotsylvania: Wednesday, November 4, 2015, at 6 p.m., C. Melvin Snow Memorial Library, Meeting Room #1, 8740 Courthouse Road, Spotsylvania, VA 22553. In case of inclement weather, the alternate meeting date is Tuesday, November 10, 2015, at 6 p.m., C. Melvin Snow Memorial Library, Meeting Room #1, 8740 Courthouse Road, Spotsylvania, VA 22553. Please note that the alternate meeting date will be used if the library is closed due to inclement weather on November 4, 2015. The library's website is: <http://www.librarypoint.org/snow>.

Meeting in Bowling Green: Monday, November 9, 2015, at 6 p.m., Bowling Green Town Hall, Rappahannock Reception Room, 117 Butler Street, Bowling Green, VA 22427. In case

of inclement weather, the alternate meeting date is Thursday, November 12, 2015, at 6 p.m., Bowling Green Town Hall, Rappahannock Reception Room, 117 Butler Street, Bowling Green, VA 22427. Please note that the alternate meeting date will be used if the offices of Caroline County are closed due to inclement weather on November 9, 2015. Caroline County's website is www.visitcaroline.com.

The public comment period will begin on November 4, 2015, and will end on Tuesday, December 8, 2015. A meeting of the TMDL technical advisory committee has been scheduled to convene on Monday, October 26, 2015, at 1:30 p.m. at the Bowling Green Town Hall, 117 Butler Street, Bowling Green, VA 22427.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed below. Please note that all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Rebecca Shoemaker, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3807, or email rebecca.shoemaker@deq.virginia.gov.

Total Maximum Daily Load Implementation Plan for the Hardware River Watershed

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan (IP) for the Hardware River watershed (North Fork Hardware and Hardware Rivers) in Albemarle and Fluvanna Counties. The North Fork Hardware River and the Hardware River were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2006. The creeks have remained on the § 303(d) list for these impairments since then.

The impaired segment of the North Fork Hardware River extends 10.42 miles from the headwaters downstream to its confluence with the South Fork Hardware River. The impaired segment of Hardware River extends 23.03 miles from its confluence with the North Fork downstream to its confluence with the James River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of total maximum daily loads when appropriate. 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

General Notices/Errata

impacts. DEQ completed bacteria TMDLs for the Hardware River and the North Fork in July 2007. The TMDLs were approved by the Environmental Protection Agency on April 10, 2008. The TMDL report is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Two public meetings were held in March and April of 2015 to kick off the development of this plan, followed by a series of working group meetings. During these meetings, participants discussed strategies to address agricultural and residential pollutant source sectors in the watershed. This input was used to develop a draft water quality improvement plan for the Hardware River watershed. A public meeting will be held with members of the steering committee to review this plan on November 3, 2015 at 7 p.m. at the Scottsville Library, 330 Bird Street, Scottsville, VA 24590.

The public comment period for the meeting will end on December 3, 2015. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850 or emailed to nesha.mcrae@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *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

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-111. Public and Private Animal Shelters.**

Publication: 32:4 VA.R. 453-457 October 19, 2015.

Correction to Proposed Regulation:

Page 457, FORMS (2VAC5-111), line 3, delete "Animal Facility Inspection Form - Shelter, VDACS AC-10-A (rev. 7/2015)" and insert "Animal Facility Inspection Form - Shelter, VDACS AC-10-A (rev. 11/2014)"

VA.R. Doc. No. R14-4009; Filed October 21, 2015, 4:25 p.m.

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **6VAC20-280. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Field Training Officers.**

Publication: 32:4 VA.R. 465-466 October 19, 2015.

Correction to Final Regulation:

Page 465, 6VAC20-280-30 C

Line 1, delete "after" insert "[after prior to]"

Line 2, delete "required to comply" insert "[required to comply exempted from compliance]"

VA.R. Doc. No. R13-2896; Filed October 16, 2015, 11:08 a.m.

BOARD FOR CONTRACTORS

Title of Regulation: **18VAC50-22. Board for Contractors Regulations.**

Publication: 32:3 VA.R. 421-423 October 5, 2015.

Correction to Final Regulation:

Page 423, 18VAC50-22-170, after "license has passed." insert:

"For reinstatement fees received on or before August 31, 2017, the fees shall be \$200 for Class C reinstatement, \$250 for Class B reinstatement, and \$300 for Class A reinstatement. These fees include the renewal fee listed in 18VAC50-22-140."

VA.R. Doc. No. R13-3533; Filed October 22, 2015, 2:29 p.m.