



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

<http://register.dls.virginia.gov>

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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.

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PUBLICATION SCHEDULE AND DEADLINES

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

August 2016 through August 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 (Monday)	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2014
33:26	August 2, 2017	August 21, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

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 GENERAL SERVICES

Proposed Regulation

Title of Regulation: 1VAC30-105. Regulations Banning Concealed Firearms in Offices Owned or Occupied by Executive Branch Agencies (adding 1VAC30-105-10 through 1VAC30-105-80).

Statutory Authority: § 2.2-1102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 21, 2016.

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

Basis: Subsection B of § 2.2-1100 and subdivision A 1 of § 2.2-1102 of the Code of Virginia establish the Department of General Services (DGS) and allow the department to prescribe regulations. DGS has been directed by the Governor to issue these regulations in Executive Order (EO) 50 (2015).

Purpose: As stated in the EO, it is the Governor's desire to protect citizens and state employees from gun violence. The purpose of this regulation is to ban concealed firearms from offices owned, leased, or controlled by executive branch agencies. While state employees are already prohibited from carrying firearms through state personnel directives, this regulation will extend that prohibition to members of the public and other nonemployee individuals who may enter the premises.

Substance: Possession or carrying of any concealed firearm by any person is prohibited in and on state offices. Entry upon a state office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.

Issues: Every day, over 60,000 Virginians report to work in state government buildings across the Commonwealth to provide services to their fellow Virginians. Citizens rely on open access to these facilities to address their personal and professional needs. Government facilities are essential to allowing citizens access to their government representatives.

Allowing concealed carry in these facilities exposes our state employees and fellow citizens to unnecessary risk.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Executive Order 50 (2015), the Department of General Services (DGS) proposes to ban carrying of concealed weapons in executive branch buildings.

Estimated Economic Impact. On October 15, 2015, Governor McAuliffe signed Executive Order 50 (2015)¹ ordering the Director of DGS "to propose regulations banning 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." DGS promulgated an emergency regulation to implement this order on December 3, 2015, and it is currently scheduled to expire on June 2, 2017. The proposed regulation will make the emergency regulation permanent.

This regulation applies to buildings owned, leased, or controlled in whole or in part by or for an executive branch agency. It does not apply to open carry firearms in executive branch buildings as DGS has previously implemented the executive ban on those firearms through a guidance document. Pursuant to state personnel policy, state employees were already prohibited from possessing, brandishing, or using weapons on state premises. State institutions of higher education are exempt from this regulation so long as the institution has implemented its own policies or regulations governing firearms. State-owned or leased parking facilities, recreational lodges and cabins, employee housing, rest areas on interstate highways, and public hunting lands are not subject to this regulation.

According to DGS, there are approximately 11,000 buildings that fall under the purview of the proposed regulation. Some of the buildings are storage facilities but the remainder house many employees and some are visited by members of the public. Approximately 60,000 employees are estimated to be working in the buildings covered by this regulation;² however, the number of public visitors to affected buildings is not known.

According to the State Police, the numbers of resident and non-resident concealed carry permits in Virginia are 429,403 and 17,917, respectively.³ As of July 2015, Virginia's 18 year-old and older population is estimated to be 6,512,571.⁴ Thus, approximately seven percent of the adult population carries a concealed firearm in Virginia.⁵ Given these statistics, it would be reasonable to expect that about seven

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percent of visitors to executive branch buildings may be affected by the proposed regulation.

The intended goal of the proposed regulation is to reduce or prevent gun violence in executive branch buildings. Assessing the benefits versus costs of the proposed regulation essentially requires an assessment of the impact of the proposed ban. For example, whether the ban would prevent attempts to bring unauthorized concealed weapons into the state buildings by perpetrators would have to be estimated. Similarly, whether the ban would have an impact on the potential for an attack resulting from the presence of a firearm in a state building would have to be estimated, as well. To date, data on gun violence in government office buildings reflects statistically low incident rates given that many individuals pass in and out of state office buildings each day. Any estimate of the likelihood of an attack or its potential impact based on the small sample size of available data would be subject to great uncertainty. For example, even though we know that between 2000 and 2013, 11 active shooter incidents (not inclusive of all firearm incidents) occurred on non-military government properties (excluding schools) in the United States,⁶ estimating potential future incidents from that data would be subject to great uncertainty. In addition, there is no available data of past incidents of guns entering or being brandished within affected executive branch buildings in Virginia. Thus, any impact of the proposed ban cannot be ascertained due to lack of data.

Whether the proposed regulation introduces additional compliance costs also must be considered. The security for buildings owned directly by agencies is decided by the agency that owns the building. The security in executive branch buildings in Capitol Square is provided through a contract between the Division of Capitol Police and DGS. The security for space leased from the private sector is provided by the landlord. According to DGS, there has been no directive to require additional training for the security personnel or to purchase new equipment to enforce the regulation. The proposed regulation requires agencies to post signs in state buildings occupied or managed by them. According to Virginia Correctional Enterprises, \$29,552 worth of signs have been purchased to date. These signs include information on the prohibition of both open and concealed carry weapons.

Businesses and Entities Affected. There are approximately 11,000 buildings used by executive branch agencies and approximately 60,000 employees working in those buildings. Currently, the numbers of resident and non-resident concealed carry permits in Virginia are 429,403 and 17,917, respectively.⁷ Given the available population and permit data, it would be reasonable to expect that about seven percent of visitors to executive branch buildings may be affected by the proposed regulation. However, there is no available data on the actual total number of private citizens or the number of private citizens with concealed carry permits visiting affected facilities.

Localities Particularly Affected. The proposed regulation applies statewide.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not have an adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation prohibits concealed weapons from being carried into executive branch buildings. Based on comments submitted during the comment period following the Notice of Intended Regulatory Action for the permanent replacement regulation, many concealed carry permit holders perceive the ban as being adverse to their right to carry arms. However, since it is not known how many of these individuals would be directly impacted (e.g., wanting to enter a state building carrying their weapon), this potential adverse impact cannot be quantified as an adverse economic impact.

¹ See <http://governor.virginia.gov/media/4685/eo-50-on-gun-violence-final.pdf>.

² Source: EO 50 (2015)

³ Chapter 47 of the 2016 Acts of Assembly amended the reciprocity requirements which may impact the number of non-resident permits in Virginia. See <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0047>.

⁴ Source: U.S. Census Bureau

⁵ 6.6 percent if non-resident permits are excluded and 6.9 percent with non-resident permits.

⁶ A Study of Active Shooter Incidents in the United States Between 2000 and 2013, U.S. Department of Justice, Federal Bureau of Investigation, September 16, 2013.

⁷ Chapter 47 of the 2016 Acts of Assembly amended the reciprocity requirements which may impact the number of non-resident permits in Virginia. See <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0047>.

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

Summary:

The proposed regulation prohibits concealed firearms in offices and workplace facilities under the ownership, lease, or control of an executive branch agency and includes a requirement for posting signs to this effect.

CHAPTER 105

REGULATIONS BANNING CONCEALED FIREARMS IN OFFICES OWNED OR OCCUPIED BY EXECUTIVE BRANCH AGENCIES

1VAC30-105-10. Purpose.

The purpose of this chapter is to ban the carrying of concealed firearms in offices occupied by executive branch agencies, with certain exceptions as set forth herein.

1VAC30-105-20. Applicability.

A. This chapter applies to all buildings owned, leased, or controlled in whole or in part by or for an executive branch agency. This chapter is intended to be consistent with the Virginia Department of Human Resource Management Policy 1.80 – Workplace Violence, which prohibits state employees from possessing, brandishing, or using a weapon that is not required by the employee's position while on state premises or engaged in state business.

B. This chapter applies to the concealed carrying of firearms; the Department of General Services has issued a guidance document elsewhere prohibiting the open carrying of firearms.

C. The prohibition against carrying a concealed firearm does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.

D. This chapter does not apply to individuals who are on public hunting lands, are engaged in lawful hunting, and are in compliance with the Department of Game and Inland Fisheries hunting and trapping regulations found in 4VAC15, regarding allowable firearms and hunting license requirements.

1VAC30-105-30. Definitions.

"Authorized security personnel" means a natural person who is employed to (i) perform the functions of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is assigned to protect; (ii) safeguard and protect persons and property; or (iii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is assigned to protect.

"Concealed firearm" means a firearm hidden from common observation, including a firearm hidden when it is observable but is of such deceptive appearance as to disguise the firearm's true nature.

"Executive branch agency" means any administrative unit of state government in the executive branch, including any department, institution, commission, board, council, authority, or other body, however designated.

"Firearm" means any handgun, pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material.

"Law-enforcement officer" means the same as that term is defined in § 18.2-307.1 of the Code of Virginia. This shall also include retired law-enforcement officers certified pursuant to § 18.2-308.016 of the Code of Virginia.

"State office" means any building or portion of a building owned, leased, or controlled by or for an executive branch agency. This includes that portion of any building open to others and then used exclusively for functions or activities sponsored by an executive branch agency tenant or tenants while such functions are taking place. It shall not include parking facilities, lodges or cabins owned by the Commonwealth and used solely for the public for recreational activities, any buildings that serve as living quarters for Commonwealth employees, or any buildings at a rest area on an interstate highway.

1VAC30-105-40. Possession of firearms prohibited.

Possession or carrying of any concealed firearm by any person is prohibited in state offices. Entry upon a state office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.

1VAC30-105-50. Required lease terms for state offices.

All leases entered into where an executive branch agency is the lessor shall contain a prohibition on concealed firearms consistent with this chapter. All leases entered into for the benefit of an executive branch agency shall contain this prohibition to indicate the lessor's acknowledgment. Exceptions may be allowed where approved in writing by the Governor or his designee.

1VAC30-105-60. Posting of signs.

A. Posting location. Signs shall be posted at all state offices indicating the prohibition against carrying concealed firearms. Where the entire premises are owned or occupied by an executive branch agency, signs shall be displayed at every entrance. Where only a portion of the premises are leased for an executive branch agency, the signs shall be displayed within the leased space. If an executive branch agency is

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using an office open to others, temporary signs shall be displayed at or near the entry to the office during the time the office is being used exclusively for Commonwealth sponsored functions or activities while such functions are taking place.

B. Size and design. Signs shall be of a size and design approved by the Department of General Services. Agencies shall be responsible for obtaining signage design from the Department of General Services and for posting of the signs.

1VAC30-105-70. Enforcement.

The occupying agency shall be responsible for enforcing this chapter.

1VAC30-105-80. Exemptions.

A. A state institution of higher education is exempt from this chapter if the institution has implemented its own policies or regulations governing firearms.

B. Members of the Virginia National Guard (the guard) who possess a valid concealed handgun permit shall be exempt from this chapter while at facilities owned by the guard or under contract or lease to the guard. This exemption may be withdrawn by the commanding officer of any member while such member is participating in any training or other exercises where the commanding officer determines that (i) such possession would interfere with the conduct of such training or other exercises, (ii) such possession may result in mission impairment, or (iii) the member is unfit to carry a handgun.

C. The Governor or his designee may otherwise grant exemptions from the requirements of this chapter. To qualify for an exemption, the applying executive branch agency must show that an alternative policy consistent with the Commonwealth's policy against firearms in state offices is appropriate.

VA.R. Doc. No. R16-4572; Filed August 3, 2016, 9:33 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: 2VAC5-685. Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act (amending 2VAC5-685-10 through 2VAC5-685-60, 2VAC5-685-80, 2VAC5-685-90, 2VAC5-685-130, 2VAC5-685-170, 2VAC5-685-180; adding 2VAC5-685-65).

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: September 22, 2016.

Agency Contact: Liza Fleeson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer

Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments update the regulation by (i) amending certain definitions; (ii) allowing an additional 90-day training after an individual fails his initial examination; (iii) revising the process by which persons who cannot read pesticide labels can be certified to apply restricted use pesticides on their own property; (iv) clarifying the on-the-job training requirements for prospective applicators; (v) establishing numeric identifiers for the existing categories of private applicator certification; (vi) prescribing the minimum educational requirements for certified commercial applicators and registered technicians taking board-approved recertification training programs; and (vii) clarifying the requirements for the issuance of a certificate pursuant to a reciprocal agreement with another state.

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

Part I Definitions

2VAC5-685-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. ~~An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 (§ 3.2-3900 et seq.) or Article 4 (§ 3.2-3935 et seq.), respectively, of Chapter 39 of Title 3.2 of the Code of Virginia.~~

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.‡

"Board" means the Board of Agriculture and Consumer Services.

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.2-3929 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board-approved requirements.⚡

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.⚡

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

"Department" means the Department of Agriculture and Consumer Services.

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance ~~which~~ that by itself or in combination with any other substance emits or liberates a gas or gases, fumes, or vapors that will destroy vermin, rodents, insects, and other pests, and ~~are~~ is usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.⚡

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.⚡

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects ~~which~~ that may be present in any environment whatsoever.⚡

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.⚡

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.⚡

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the Board of Agriculture and Consumer Services, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.⚡

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.⚡⚡

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.⚡

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations ~~which~~ that produce agricultural products

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unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.⌘

"Private applicator" means an applicator who uses or supervises the use of any pesticide ~~which~~ that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.⌘

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.⌘ Every registered technician is certified in Category 60 regardless of the category or subcategory in which he is trained and applies pesticides.

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.), or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1947 (7 USC § 3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.⌘

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.⌘⌘

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person.⌘

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person and is physically present on the property upon which the pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing, and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.⌘

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.⌘⌘

[Part II

Certification of Pesticide Applicators]

2VAC5-685-20. General requirements for certification.

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;
2. Registered technicians; and
3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;
2. Areas where open food is stored, processed, or sold; and
3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any pesticide on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification;

2. Submit a completed application to the commissioner; and

3. Pass required ~~examination(s)~~ examination or examinations. ~~a. Applicants who do not pass the examination on their first attempt are eligible to be reexamined for the same category 10 days from the date of the first examination.~~

~~b. Applicants who fail on the second or subsequent attempts must wait 30 days from the date of the last examination before being reexamined in the same category.~~

~~e. Applicants requesting and who request reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee as determined by 2VAC5-675, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.~~

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period immediately prior to application are not eligible for certification. Such persons may appear before the board to show why they should be granted certification as outlined under provisions of § 3.2-3940 E of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. ~~The department shall issue a duplicate card to the applicator or technician upon payment of the costs of duplication.~~

2VAC5-685-30. Specific certification requirements for commercial applicators.

A. In addition to the general requirements listed in 2VAC5-685-20, applicants for commercial applicator certification shall meet the following requirements:

1. Certification as a registered technician, as well as employment as a registered technician for at least a year; or
2. One year of education, training, or experience in a pesticide related field which provides the equivalent practical knowledge of proper pesticide use required of a registered technician.

B. The application process for commercial applicators is as follows:

1. The application must be in writing to the commissioner; and
2. The application must contain:
 - a. Name;
 - b. Principal business address in the Commonwealth and elsewhere;
 - c. Qualifications and proposed operations; and
 - d. ~~Classification(s)~~ Classification or classifications desired.

Individuals seeking certification as commercial applicators must pay a fee as determined by 2VAC5-675, ~~Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.~~

C. Applicants shall, within 90 days after submitting the application and paying the fee, report to an authorized testing location and take the required examinations.

D. Applicants who do not complete the certification process within two years of the date of passing the examinations must be reexamined.

E. Aerial pesticide application applicants must meet the requirements of the Federal Aviation Agency, the Virginia Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate aerial equipment.

2VAC5-685-40. Specific certification requirements for private applicators.

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in 2VAC5-685-80, applicable to his operation. The application shall contain the applicant's name, address and classification desired for certification.

B. Persons who cannot read or understand labels shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. ~~After consulting the appropriate Virginia Cooperative Extension agent, a department pesticide investigator may recommend that the board grant a waiver of the literacy requirement.~~ Persons seeking a waiver of the literacy requirements shall petition the board. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in 2VAC5-685-80.

2VAC5-685-50. Certification procedures for registered technicians.

A. In addition to the general requirements listed in 2VAC5-685-20, individuals seeking certification as registered technicians must:

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1. Receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours ~~during the six-month period prior to applying for certification;~~
2. Complete at least 20 hours of board-approved training;
3. Submit an application form with the fee established by regulations of the Board of Agriculture and Consumer Services; and
4. Take the examination within 90 days after an individual is hired or transferred into a position where duties and functions involve the commercial use of pesticides. Individuals not passing the examination on the first attempt must reapply, following the procedures outlined in 2VAC5-685-20 D-3, ~~and retake the examination within 30 days after the first attempt.~~ Individuals failing to take and pass the exam ~~within 30 days of the initial exam~~ [within 90 days of the initial examination] may not apply pesticides commercially, even under direct on-site supervision, until they pass the examination.

Individuals who have previously submitted an application form and either did not take the examination within 90 days [after being hired or transferred into a position where duties and functions involve the commercial use of pesticides] or did not pass [the a subsequent] examination [within 90 days of the initial examination] may not apply pesticides commercially, even under direct on-site supervision, until they reapply, following the procedures outlined in 2VAC5-685-20 and pass the examination.

Applicants who do not complete the certification process within two years of the date of passing the examination must be reexamined.

B. Before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator in the following aspects of pesticide application as it relates to the proposed category or subcategory of work:

1. Pesticides to be used, including reading and understanding the label;
2. Application equipment and techniques;
3. Pests to be controlled;
4. Personal protective equipment and clothing; and
5. Environmental concerns, including storage and disposal of pesticides applied.

The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to the department of such training on forms provided by the department. Such forms must be received by the department within 10 calendar days of the completion of such training.

2VAC5-685-60. Persons exempt from certification.

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;
3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in 2VAC5-685-20 B;
4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;
5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight painters;
6. Forestry applicators standing on the ground who apply general use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators;
7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified commercial applicator;
8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides;
9. Individuals who apply pesticides for the survey for gypsy moth under the authority of the department; and
10. Individuals who apply pesticides for the survey for cotton boll weevil under the authority of the department.

[Part III

Categories of Pesticide Applicator Certification

2VAC5-685-65. Category for registered technician certification.

An individual who successfully completes the requirements prescribed in 2VAC5-685-50 for registered technician certification will receive certification in Category 60, the category designation assigned to all registered technicians regardless of the category or subcategory in which he is trained and applies pesticides.]

2VAC5-685-80. Categories for private applicator certification.

Private applicators who apply or supervise the application of restricted use pesticides shall be certified in one or more of the following categories:

~~1. Food, fiber, forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides: in the production of agricultural crops, including fumigation and chemigation; forestry products; on animals; in places where animals are confined; for the control of vertebrate pests of agricultural crops and livestock animals; in the production of agricultural commodities; and for the fumigation of agricultural products.~~

~~2. Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides to control pests: in tree nurseries; shrub nurseries; ornamental plant nurseries; flower nurseries; in greenhouses used for breeding and growing ornamental plants; in irrigation systems; and in ornamental production using fumigants.~~

~~3. Limited certificate single product/single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case by case basis.~~

~~4. Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product, or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.~~

1. Category 86: Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.

2. Category 87: Limited certificate - single product or single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case-by-case basis.

3. Category 90: Agricultural commodity production - food, fiber, and forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides (i) in the production of agricultural crops, including fumigation and chemigation; (ii) on forestry products; (iii) on animals; (iv) in places

where animals are confined; (v) for the control of vertebrate pests of agricultural crops and livestock animals; (vi) in the production of agricultural commodities; and (vii) for the fumigation of agricultural products.

4. Category 91: Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides to control pests in (i) tree nurseries, (ii) shrub nurseries, (iii) ornamental plant nurseries, (iv) flower nurseries, (v) greenhouses used for breeding and growing ornamental plants, (vi) irrigation systems, and (vii) ornamental production using fumigants.

Part IV

Knowledge Required for Certification of Pesticide Applicators

2VAC5-685-90. Determination of general knowledge and qualifications for private and commercial applicators and registered technicians.

A. Applicants shall be tested on their knowledge and qualifications concerning the use and handling of pesticides. The examination will test the applicants' general knowledge required for all categories, and the additional knowledge specifically required for each category or subcategory in which an applicator desires to be certified.

B. All applicants for certification as private or commercial applicators or registered technicians shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, as contained in a basic pesticide applicator certification training core manual. Testing will be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;
2. Understanding and interpreting pesticide labels;
3. Handling of accidents and incidents;
4. Proper methods of storing, ~~mixing/loading~~ mixing, loading, transporting, handling, applying, and disposing of pesticides;
5. Safety and health, including proper use of personal protective equipment;
6. Potential adverse effects caused by the application of pesticides under various climatic or environmental conditions, such as drift from the target area, pesticide run-off, ~~ground-water~~ groundwater and drinking water contamination, and hazard to endangered species; and
7. Recognizing common pests and general pest biology.

Part V

Renewal of Certification and Certificates

2VAC5-685-130. Renewal of certification.

A. Any certified ~~pesticide~~ private or commercial applicator or registered technician who desires to renew his certification shall do so biennially for the category or subcategory for which he is certified. ~~All applicators~~ A certified private or

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commercial applicator or registered technician must first attend board-approved recertification ~~course(s)~~ courses and submit proof of attendance at such courses, or be reexamined in basic pesticide safety and the categories desired for recertification. In addition to the ~~above~~ requirement in this subsection, commercial applicators and registered technicians shall also pay the biennial certificate fee and submit an application for renewal before the commissioner will renew their certification.

~~B. Certified applicators~~ A certified commercial applicator or registered technician must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. Legal aspects including:

- a. A reminder to follow label directions including those on use, storage, disposal, and transportation;
- b. A review of possible consequences of violating the law;
- c. A reminder that restricted use pesticides purchased under an applicator's certificate number must be for use by certified commercial applicators only;
- d. A review of a certified commercial applicator's responsibilities in supervising the use of restricted use pesticides by noncertified applicators; and
- e. A review of recordkeeping responsibilities of certified commercial applicators for restricted use pesticide applications; and

2. Category-related training including:

- a. A review of general safety for the applicator, coworkers, and the public;
- b. A review of the environmental aspects of pesticide use, including impact on nontarget organisms, wildlife, domestic animals, groundwater, etc.;
- c. A review of application techniques, including equipment, calibration, and maintenance;
- d. A review of hazards, both personal safety and environmental, unique to that specific category;
- e. A review of pertinent information regarding new chemistry or new formulations available that would be of use to applicators certified in the category;
- f. A review of integrated pest management programs applicable to the category; and
- g. A review of pests specific to category, including in-depth training on identification and control of selected specific pests. This section may be tailored to local needs.

C. A certified private applicator must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. General safety;
2. Legal update; and

3. Pest management and application technology including:

- a. A review of category-specific pest management and pesticide use patterns; and
- b. A review of category-specific pesticide application and handling technology.

D. A certified private or commercial applicator or registered technician may accumulate up to four years of credit by attending board-approved recertification courses.

~~E.~~ E. Upon expiration of certification, the applicator's certificate of a private applicator, commercial applicator, or registered technician shall become invalid. Any pesticide private applicator, commercial applicator, or registered technician who desires to renew his certification, but fails to do so within 60 days after its expiration, shall be reexamined.

Part VII

Reporting of Pesticide Accidents, Incidents, or Loss

2VAC5-685-170. Reporting of pesticide accidents and incidents.

~~A. Commercial~~ Certified commercial or private applicators or registered technicians shall report any pesticide accident or incident in which they are involved that constitutes a threat to any person, to public health or safety, or to the environment, as a result of the use or presence of any pesticide. The accident or incident shall be reported whether or not a restricted use pesticide is involved.

B. When the accident or incident involves a discharge or spillage of a pesticide, the applicator certified commercial or private applicator or registered technician shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity.

C. The applicator certified commercial or private applicator or registered technician shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator certified commercial or private applicator or registered technician shall prepare and submit a written report of the accident or incident to the Office of Pesticide Services within 10 working days after the initial notification. The report shall include the following:

1. Name of individuals involved in accident or incident;
2. Name of pesticide involved;
3. Quantity of pesticide spilled; and containment procedures;
4. Time, date, and location of accident or incident;
5. Mitigating actions taken; and
6. Name, (or description if unnamed), and location of bodies of water nearby where contamination of such bodies of water could reasonably be expected to occur due to natural or manmade actions.

Part VIII
Reciprocal Agreement

2VAC5-685-180. Issuance of a certificate on a reciprocal basis.

A. A person who is currently certified by another state or by a federal agency may make written application to the commissioner, or his duly authorized agent, for issuance of a certificate on a reciprocal basis without examination, in accordance with § 3.2-3934 of the Code of Virginia. Along with his written application, an applicant shall either (i) present an original certificate issued by the state of origin or issued by a federal agency or (ii) request that the state of origin or federal agency send an attested copy of the applicant's certification directly to the commissioner or his duly authorized agent.

The applicant shall either include a document granting power of attorney to a resident of Virginia to receive process or provide proof that the applicant has appointed a registered agent under the laws of the Commonwealth. Reciprocal certification shall not be granted based on reciprocal certification issued in another state.

B. Any certificate issued on a reciprocal basis may be suspended in the same manner and on the same grounds as a Virginia certificate pursuant to the provisions of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia. A certificate issued on a reciprocal basis may also be suspended if the nonresident's original certificate or federal certification is suspended or revoked.

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 (2VAC5-685)

~~Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 (rev. 07/12)~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 (rev. 5/13)~~

[Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 \(rev. 9/2016\)](#)

[Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 \(rev. 9/2016\)](#)

[Commercial Pesticide Applicator Certification Exam bubble answer sheet, 2003](#)

[Private Pesticide Applicator Certification Exam bubble answer sheet, 2003](#)

[Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center \(eff. 1/09\)](#)

~~Power of Attorney (rev. 5/09)~~

~~Proof of Additional Category Specific Training for Registered Technicians (eff. 3/12)~~

~~Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 (eff. 5/09)~~

~~Pesticide Registered Technician Application Form VDACS-07212 (eff. 1/09)~~

[Power of Attorney \(rev. 9/2016\)](#)

[Proof of Additional Category Specific Training for Registered Technicians \(rev. 8/2016\)](#)

[Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 \(rev. 9/2016\)](#)

[Pesticide Registered Technician Application Form - RT-A, Form VDACS-07212-A \(rev. 9/2016\)](#)

[Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination - RT-B, Form VDACS-07212-B \(eff. 9/2016\) \]](#)

VA.R. Doc. No. R15-4126; Filed August 1, 2016, 11:57 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

Title of Regulation: **6VAC20-230. Regulations Relating to Special Conservator of the Peace (amending 6VAC20-230-30, 6VAC20-230-90).**

Statutory Authority: § 9.1-150.2 of the Code of Virginia.

Effective Date: September 22, 2016.

Agency Contact: Barbara Peterson-Wilson, Director of Policy and Legislative Affairs, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-6344, or email barbara.peterson-wilson@dcjs.virginia.gov.

Summary:

The amendments (i) change the type of insurance under which special conservators of the peace must be covered; (ii) increase the amount of insurance required from \$10,000 to \$500,000; and (iii) pursuant to Chapters 766 and 772 of the 2015 Acts of Assembly, eliminate language allowing a special conservator of the peace to carry a surety bond instead of insurance.

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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.

6VAC20-230-30. Initial registration application.

A. Individuals are required to be registered pursuant to § 19.2-13 of the Code of Virginia in the category of special conservator of the peace. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with firearms verification. The court may limit or prohibit the carrying of weapons by any special conservator of the peace as defined in § 19.2-13 ~~F~~ G of the Code of Virginia.

B. Each person applying for registration shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 18 years of age;
2. Successfully complete all initial training requirements for special conservator of the peace, including firearms verification if applicable, requested pursuant to the entry-level training standards in 6VAC20-230-160; and
3. Be a United States citizen or legal resident alien of the United States.

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;
2. His mailing address on the application;
3. Fingerprint cards pursuant to 6VAC20-230-40;
4. The applicable, nonrefundable application fee;
5. A drug and alcohol test pursuant to ~~6VAC230-50~~ 6VAC20-230-50; and
6. Pursuant to § 19.2-13 ~~E~~ D of the Code of Virginia, documentation verifying that the applicant has secured ~~a surety bond or cash bond in the amount not to be less than \$10,000 executed by a surety company authorized to do business in Virginia, or~~ a certificate of insurance reflecting the department as a certificate holder, showing a policy of ~~comprehensive general~~ professional law-enforcement liability insurance with a minimum coverage of ~~\$10,000~~ \$500,000 issued by an insurance company authorized to do business in Virginia.

D. Upon completion of the initial registration application requirements, the department may issue a temporary registration letter for not more than 120 days at a time while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements. This temporary registration letter shall be taken to the circuit court where seeking appointment for special conservator of the peace.

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

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

G. Once the individual has met the requirements and received a temporary registration letter, he shall petition the circuit court for appointment in the jurisdiction where the individual will be employed.

H. Meeting the requirements of registration allows an individual to be eligible for appointment. Registration does not guarantee appointment.

I. Upon completion of an appointment by a circuit court, the individual shall file with the department a copy of the court order granting appointment as a special conservator of the peace. A final registration letter will be issued by the department. This registration letter shall be submitted to a specified entity for a state-issued photo identification card.

6VAC20-230-90. Reinstatement.

A. Individuals who do not renew their registration on or before the expiration date may not work as a special conservator of the peace until reinstatement requirements have been met. Pursuant to the Code of Virginia, all such persons must currently be registered with the department as a special conservator of the peace.

B. A renewal application must be received by the department within 60 days following the expiration date of the registration in order to be reinstated by the department providing all renewal requirements have been met. The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid registration during the reinstatement period. The department shall not reinstate a registration that has become null and void due to not maintaining required insurance ~~or surety bond coverage~~. The department will notify the court when an individual has not met the registration renewal requirements with the department. Prior to reinstatement, the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements including required training pursuant to this chapter; and
2. The applicable, nonrefundable reinstatement fee.

C. A registration shall be renewed or reinstated only when all renewal application requirements are received by the department. After the 60-day reinstatement period, an applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application

for reinstatement pursuant to the renewal process for the application.

VA.R. Doc. No. R15-4099; Filed August 3, 2016, 9:18 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Titles of Regulations: 8VAC20-440. Regulations Governing the Employment of Professional Personnel (repealing 8VAC20-440-10 through 8VAC20-440-160).

8VAC20-441. Regulations Governing the Employment of Professional Personnel (adding 8VAC20-441-10 through 8VAC20-441-140).

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Public Hearing Information:

September 22, 2016 - 11 a.m. - James Monroe Building, 101 North 14th Street, 22nd Floor Conference Room, Richmond, Virginia 23219. The public hearing will begin immediately following adjournment of the Board of Education business meeting.

Public Comment Deadline: October 21, 2016.

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

Basis: Section IV of Article VIII of the Constitution of Virginia grants the Board of Education authority for the general supervision of the public school system. Section 22.1-16 of the Code of Virginia authorizes the board to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 23 of the Code of Virginia.

Purpose: The regulations provide the requirements for contracts, probationary periods of teachers, assistant principals, and principals and evaluation criteria that protect school divisions and educators. The goals of the proposal are to provide clarity to the regulations and align the regulations with the Code of Virginia. The regulations do not affect public health, safety, or welfare.

Substance: The revisions include defining assistant principals; clarifying the definitions of teachers and supervisors; changing notification dates from April 15 to June 15; aligning evaluations with the Board of Education Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents; defining the probationary terms for teachers; stipulating the evaluation period of teachers and principals; defining the standard 10-month contract; and clarifying that a temporarily employed

teacher is not required to be licensed by the Board of Education.

Issues: The revisions to the Regulations Governing the Employment of Professional Personnel conform with statute, therefore the advantage is that the regulations provide clarity to the policies and procedures regarding contracts. The regulations do not pose any major disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes several amendments to the regulation in order to reflect changes in the Code of Virginia. Additionally, the Board proposes to repeal language on a uniform hiring process.

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

Estimated Economic Impact. Changes to the Code of Virginia from Chapters 106 and 687 of the 2012 Acts of Assembly, and Chapters 588 and 650 of the 2013 Acts of Assembly, require amendments to this regulation in order to accurately reflect the law. These proposed changes to the regulation thus do not change requirements in effect. The proposed revisions include: 1) defining assistant principals, 2) clarifying the definitions of teachers and supervisors, 3) changing notification dates from April 15 to June 15, 4) aligning evaluations with the Board of Education Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents, 5) defining the probationary terms for teachers (at local option, a probationary term can be from three years to up to five years), 6) stipulating the evaluation period of teachers and principals, 7) defining the standard 10-month contract, and 8) clarifying that a temporarily employed teacher¹ is not required to be licensed by the Board of Education. Amending the regulation to reflect the Code of Virginia changes will be beneficial in that readers of the regulation will be better informed concerning the actual law in effect.

The current regulations include four sections on the "Uniform Hiring of Teachers." The first section states the following:

The goal for regulations for uniform hiring of teachers is to establish a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates, which are embodied in the three-phase employment process, establish minimum time frames to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of the locality, and offer professional mobility for teachers.

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The three other sections concern Phase One, Phase Two, and Phase Three, respectively, of the three phases of the uniform hiring process.

The Board proposes to repeal the four sections on the "Uniform Hiring of Teachers." The repeal of these sections would give local school divisions additional flexibility, particularly in the timing of hiring. The local school divisions could choose to coordinate with their respective local governments on timing with local budgets. The additional flexibility on the hiring calendar may result in less certainty about the timing of the hiring process for teachers; on the other hand the additional flexibility may be helpful for some teachers for whom the current state mandated schedule is not ideal.

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

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

Projected Impact on Employment. The proposed amendments are unlikely to affect the number of jobs in the Commonwealth. The proposal to repeal the sections on the uniform hiring process may affect how and when local school divisions choose to hire teachers.

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 do not 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 will not affect real estate development costs.

¹From Code of Virginia § 22.1-302: "A temporarily employed teacher, as used in this section, means (i) one who is employed to substitute for a contracted teacher for a temporary period of time during the contracted teacher's absence or (ii) one who is employed to fill a teacher vacancy for a period of time, but for no longer than 90 teaching days in such vacancy, unless otherwise approved by the Superintendent of Public Instruction on a case-by-case basis, during one school year."

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the requirements of the Administrative Process Act.

Summary:

The proposed regulatory action replaces the existing regulation numbered 8VAC20-440 with a new regulation numbered 8VAC20-441. Proposed amendments reflect changes in the Code of Virginia based on Chapters 106 and 687 of the 2012 Acts of Assembly and Chapters 588

and 650 of the 2013 Acts of Assembly. The proposed amendments include (i) defining assistant principals; (ii) clarifying the definitions of teachers and supervisors; (iii) changing notification dates from April 15 to June 15; (iv) aligning evaluations with the Board of Education Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents; (v) defining the probationary terms for teachers, which, at local option, can be three years and up to five years; (vi) stipulating the evaluation period of teachers and principals; (vii) defining the standard 10-month contract; and (viii) clarifying that a temporarily employed teacher is not required to be licensed by the Board of Education. Additional amendments repeal the provisions on the uniform hiring of teachers.

CHAPTER 441

REGULATIONS GOVERNING THE EMPLOYMENT OF PROFESSIONAL PERSONNEL

8VAC20-441-10. Definitions.

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

"Annual contract" means a contract between a probationary teacher, assistant principal, principal, or supervisor and the local school board that sets forth the terms and conditions of employment for one school year.

"Assistant principal" means a person (i) who is regularly employed full time as an assistant principal and (ii) who holds a valid license issued by the Board of Education necessary to be an assistant principal.

"Board" means the Virginia Board of Education, which has general supervision of the public school system.

"Breach of contract" means, for the purpose of this chapter, a teacher failing to honor a contract for the current or next school year without formal release from that contract from the local school board. "Breach of contract" does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board that includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between a teacher, assistant principal, principal, or supervisor who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with which the employee is currently under contract.

"Extracurricular activity sponsorship contract" means a separate contract between the employee and the local school board that includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in

conjunction with regular classroom, curriculum, or instructional programs.

"Next school year" means the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal and (ii) who holds a valid license issued by the Board of Education necessary to be a principal.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in an instructional supervisory position as specified in this chapter and (ii) who is required by the board to hold a license prescribed in this chapter to be employed in that position. An instructional supervisory position has authority to direct or evaluate teachers, assistant principals, principals, or other instructional personnel.

"Teacher" means a person (i) who is regularly employed full time as a teacher, guidance counselor, or librarian and (ii) who holds a valid teaching license.

8VAC20-441-20. (Reserved.)

8VAC20-441-30. Contractual period defined.

The local school board shall define the length of the contract period for each employee. A standard 10-month contract for a teacher shall include 200 days, including:

1. 180 teaching days or 990 instructional hours (minimum required by law); and
2. Up to 20 days for activities such as teaching, participating in professional development, planning, evaluating, completing records and reports, participating on committees or in conferences, or such other activities as may be assigned or approved by the local school board.

8VAC20-441-40. Annual and continuing contract to be in writing.

Annual and continuing contracts with teachers, assistant principals, principals, and supervisors must be in writing. The local school board may utilize prototypes of contract forms provided by the board or may choose to develop its own contracts, but in so doing must ensure that the essential elements set forth in 8VAC20-441-140 are included.

8VAC20-441-50. Length of the probationary term for teacher.

A probationary term of full-time employment under an annual contract for at least three years and, at the option of the local school board, up to five consecutive years in the same school division is required before a teacher is issued a continuing contract. Once continuing contract status has been attained in a school division in the Commonwealth, another probationary period as a teacher need not be served in any other school division unless a probationary period not exceeding two years is made a part of the contract of employment.

8VAC20-441-60. Calculating term for first year of teaching.

For the purpose of calculating the years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

8VAC20-441-70. Probationary period for principal or supervisor.

A person employed as a principal, assistant principal, or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve a probationary term of three consecutive years in such position in the same school division before acquiring continuing contract status as a principal, assistant principal, or supervisor.

8VAC20-441-80. Probationary period when employee separates from service.

If a teacher, principal, assistant principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

8VAC20-441-90. Effect of service outside the Virginia system.

Teaching service outside of the Virginia public school system shall not be counted as meeting in whole or in part the required probationary term.

8VAC20-441-100. Eligibility for continuing contract.

A. Only persons regularly employed full time by a school board who hold a valid license as teachers, assistant principals, principals, or supervisors shall be eligible for continuing contract status.

B. Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide such training at no cost to teachers employed in their division. In the event a local school division fails to offer such training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

8VAC20-441-110. Continuing contract status when employee separates from service.

When a teacher has attained continuing contract status in a school division in the Commonwealth, and separates from and returns to teaching service in a school division in Virginia by the beginning of the third year, such teacher shall be required to serve a probationary period not to exceed two years if such probationary period is made part of the contract

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for employment. If a teacher who has attained continuing contract status separates from service and does not return to teaching in Virginia public schools by the beginning of the third year, such teacher shall be required to begin a new probationary period.

8VAC20-441-120. Contract to be separate and apart from annual or continuing contract.

The coaching contract or extracurricular activity sponsorship contract with a teacher shall be separate and apart from the teacher's annual or continuing contract, and termination of the coaching or extracurricular activity sponsorship contract shall not constitute cause for the termination of the annual or continuing contract.

For the purposes of this chapter, "extracurricular activity sponsorship" means an assignment for which a monetary supplement is received, requiring responsibility for any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

8VAC20-441-130. Termination notice required.

The coaching contract or extracurricular activity sponsorship contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

8VAC20-441-140. Listing of essential contract elements.

A. The list of essential contract elements can be used by certain local school divisions who prefer to develop contracts specific to their circumstances or situations. This list of essential elements is provided as an alternative to the formal prototypes available.

B. Annual contracts. Any annual contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum, the following provisions:

1. A statement identifying the names and titles of the parties to the contract.
2. A statement of the licensure requirements for the position or options thereto.
3. A statement of the beginning date of service, the term, and the effective date of the contract.
4. A statement of the duties to be performed under the contract.
5. A statement of expectations of the employee with regard to compliance with local, state, or federal statutes, regulations and constitutional provisions.
6. A statement of the provisions concerning assignment, reassignment, termination, suspension, probation, or resignation of the employee, and mutual termination of the contract.

7. A statement of the penalties for the employee's failure to comply with the terms of the contract.

8. A statement identifying the school term.

9. A statement of the conditions under which the school term and/or contract may be extended.

10. A statement of the amount of compensation due the Employee and the method of payment.

11. A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

C. Continuing contracts. Any continuing contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum the following provisions:

1. All of the provisions required for the annual contract.
2. A statement explaining the continuing nature of the contract.

D. Coaching and extracurricular. Any athletic coaching contract with school personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include the following provisions:

1. A statement identifying the names and titles of the parties to the contract.
2. A statement of the duties to be performed under the contract.
3. A statement of the amount of compensation due the employee and the method of payment.
4. A statement of expectations of the employee with regard to compliance with local, state, or federal statutes, regulations and constitutional provisions.
5. A statement setting forth conditions for termination of the contract.
6. A statement identifying the limitations on the use of the experience toward length of service, substitution for teaching experience and rights in favor of the employee.
7. A statement of the beginning date of service, the term, and the effective date of the contract.
8. A statement of special covenants mutually agreed upon by the employer and employee that form a basis for the contract.

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 (8VAC20-441)

[Annual Form - Contract with Professional Personnel](#)
[Continuing Form Contract with Professional Personnel](#)
[Athletic Coaching Contract with School Personnel](#)
[Extracurricular Activity Sponsorship Contract with School Personnel](#)

VA.R. Doc. No. R13-3478; Filed July 14, 2016, 8:44 a.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-5, 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-155, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-460, 9VAC25-260-470, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, 9VAC25-260-540).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Effective Date: Effective upon the filing of notice of approval by the U.S. Environmental Protection Agency with the Registrar of Regulations.

Agency Contact: David Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, TTY (804) 698-4021, or email david.whitehurst@deq.virginia.gov.

Summary:

The amendments include (i) increasing the stringency of lead criteria, (ii) reclassifying 20 waters from Class III (nontidal free flowing waters) to Class VII (swamp waters), (iii) adding site-specific maximum temperature criteria for four trout-stocked waters, and (iv) deleting the manganese criterion for public water supplies.

Changes since publication of the proposed regulation include correction of the aquatic life water quality criteria concentrations for lead in saltwater and removal from the final regulation of (i) the eight human health criteria parameters, (ii) the water quality criteria for ammonia to protect aquatic life in freshwater, and (iii) the designation for four Class VII swamp water designations.

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

Surface Water Standards with General, Statewide Application
9VAC25-260-5. Definitions.

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

"Algicides" means chemical substances, most commonly copper-based, used as a treatment method to control algae growths.

"Board" means State Water Control Board.

"Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York, Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of 9VAC25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9VAC25-260-410, subdivisions 5 and 5a of 9VAC25-260-415, subdivisions 1 and 1a of 9VAC25-260-440, subdivisions 2, 3, 3a, 3b and 3e of 9VAC25-260-520, and subdivision 1 of 9VAC25-260-530. This definition does not include free flowing sections of these waters.

"Criteria" means elements of the board's water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Designated uses" means those uses specified in water quality standards for each ~~water body~~ waterbody or segment whether or not they are being attained.

"Drifting organisms" means planktonic organisms that are dependent on the current of the water for movement.

"Epilimnion" means the upper layer of nearly uniform temperature in a thermally stratified man-made lake or reservoir listed in 9VAC25-260-187 B.

"Existing uses" means those uses actually attained in the ~~water body~~ waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.

"Lacustrine" means the zone within a lake or reservoir that corresponds to nonflowing lake-like conditions such as those near the dam. The other two zones within a reservoir are riverine (flowing, river-like conditions) and transitional (transition from river to lake conditions).

"Man-made lake or reservoir" means a constructed impoundment.

"Mixing zone" means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but designated

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uses in the ~~water body~~ waterbody on the whole are maintained and lethality is prevented.

"Natural lake" means an impoundment that is natural in origin. There are two natural lakes in Virginia: Mountain Lake in Giles County and Lake Drummond located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp.

"Passing organisms" means free swimming organisms that move with a mean velocity at least equal to the ambient current in any direction.

"Primary contact recreation" means any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming, water skiing, canoeing and kayaking).

"Pycnocline" means the portion of the water column where density changes rapidly because of salinity and/or temperature. In an estuary the pycnocline is the zone separating deep, cooler more saline waters from the less saline, warmer surface waters. The upper and lower boundaries of a pycnocline are measured as a change in density per unit of depth that is greater than twice the change of the overall average for the total water column.

"Secondary contact recreation" means a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of waters (examples include but are not limited to wading, boating and fishing).

"Swamp waters" means waters with naturally occurring low pH and low dissolved oxygen caused by: (i) low flow velocity that prevents mixing and reaeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH.

"Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in 9VAC25-260-10 H.

"Water quality standards" means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).

"Wetlands" means those areas that are inundated or saturated by surface water 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.

9VAC25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature.***

CLASS	DESCRIPTION OF WATERS	DISSOLVED OXYGEN (mg/l)****		pH	Max. Temp. (°C)
		Min.	Daily Avg.		
I	Open Ocean	5.0	--	6.0-9.0	--
II	Tidal Waters in the Chowan Basin and the Atlantic Ocean Basin	4.0	5.0	6.0-9.0	--
II	Tidal Waters in the Chesapeake Bay and its tidal tributaries	see 9VAC25-260-185		6.0-9.0	
III	Nontidal Waters (Coastal and Piedmont Zones)	4.0	5.0	6.0-9.0	32
IV	Mountainous Zones Waters	4.0	5.0	6.0-9.0	31
V	Stockable Trout Waters	5.0	6.0	6.0-9.0	21
VI	Natural Trout Waters	6.0	7.0	6.0-9.0	20
VII	Swamp Waters	*	*	3.7-8.0*	**

*This classification recognizes that the natural quality of these waters may fluctuate outside of the values for D.O. and pH set forth above as water quality criteria in Class I through VI waters. The natural quality of these waters is the water quality found or expected in the absence of human-induced pollution. Water quality standards will not be considered violated when conditions are determined by the board to be natural and not due to human-induced sources. The board may develop site specific criteria for Class VII waters that reflect the natural quality of the waterbody when the evidence is sufficient to demonstrate that the site specific criteria rather than narrative criterion will fully protect aquatic life uses. Virginia Pollutant

Discharge Elimination System limitations in Class VII waters shall not cause significant changes to the naturally occurring dissolved oxygen and pH fluctuations in these waters.

**Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

***The water quality criteria in this section do not apply below the lowest flow averaged (arithmetic mean) over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years (a climatic year begins April 1 and ends March 31). See 9VAC25-260-310 and 9VAC25-260-380 through 9VAC25-260-540 for site specific adjustments to these criteria.

****For a thermally stratified man-made lake or reservoir in Class III, IV, V or VI waters that are listed in 9VAC25-260-187, these dissolved oxygen and pH criteria apply only to the epilimnion of the ~~water body~~ waterbody. When these waters are not stratified, the dissolved oxygen and pH criteria apply throughout the water column.

9VAC25-260-140. Criteria for surface water.

A. Instream water quality conditions shall not be acutely¹ or chronically² toxic except as allowed in 9VAC25-260-20 B (mixing zones). The following are definitions of acute and chronic toxicity conditions:

"Acute toxicity" means an adverse effect that usually occurs shortly after exposure to a pollutant. Lethality to an organism is the usual measure of acute toxicity. Where death is not easily detected, immobilization is considered equivalent to death.

"Chronic toxicity" means an adverse effect that is irreversible or progressive or occurs because the rate of injury is greater than the rate of repair during prolonged exposure to a pollutant. This includes low level, long-term effects such as reduction in growth or reproduction.

B. The following table is a list of numerical water quality criteria for specific parameters.

Table of Parameters ^{6,7}						
PARAMETER CAS Number	USE DESIGNATION					
	AQUATIC LIFE				HUMAN HEALTH	
	FRESHWATER		SALTWATER		Public Water Supply ³	All Other Surface Waters ⁴
	Acute ¹	Chronic ²	Acute ¹	Chronic ²		
Acenaphthene (µg/l) 83329					670	990
Acrolein (µg/l) 107028	<u>3.0</u>	<u>3.0</u>			6.1	9.3
Acrylonitrile (µg/l) 107131 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.51	2.5
Aldrin (µg/l) 309002 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	3.0		1.3		0.00049	0.00050
Ammonia (µg/l) 766-41-7 Chronic criterion is a 30-day average concentration not to be exceeded more than once every three (3) years on the average. (see 9VAC25-260-155)						

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Anthracene (µg/l) 120127					8,300	40,000
Antimony (µg/l) 7440360					5.6	640
Arsenic (µg/l) ⁵ 7440382	340	150	69	36	10	
Bacteria (see 9VAC25-260-160 and 9VAC25-260-170)						
Barium (µg/l) 7440393					2,000	
Benzene (µg/l) 71432 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					22	510
Benzidine (µg/l) 92875 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.00086	0.0020
Benzo (a) anthracene (µg/l) 56553 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
Benzo (b) fluoranthene (µg/l) 205992 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
Benzo (k) fluoranthene (µg/l) 207089 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
Benzo (a) pyrene (µg/l) 50328 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
Bis2-Chloroethyl Ether (µg/l) 111444 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.30	5.3

Bis2-Chloroisopropyl Ether (µg/l) 108601					1,400	65,000
Bis2-Ethylhexyl Phthalate (µg/l) 117817 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ . Synonym = Di-2-Ethylhexyl Phthalate.					12	22
Bromoform (µg/l) 75252 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					43	1,400
Butyl benzyl phthalate (µg/l) 85687					1,500	1,900
Cadmium (µg/l) ⁵ 7440439 Freshwater values are a function of total hardness as calcium carbonate (CaCO ₃) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [[e ^{1.128[ln(hardness)] - 3.828}] [e ^{0.8407[ln(hardness)] - 3.279}] Freshwater chronic criterion (µg/l) WER [[e ^{0.7852[ln(hardness)] - 3.490}] [e ^{0.6247[ln(hardness)] - 3.384}]] CF _c WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm [<u>CF_c = conversion factor (chronic)</u> <u>CF_c = 1.101672 [(ln hardness)(0.041838)]</u>]	[3.9 1.8] CaCO ₃ = 100	[1.1 0.55] CaCO ₃ = 100	40 X WER	8.8 X WER	5	

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Carbon tetrachloride (µg/l) 56235 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					[2.3 4.3]	[16 30]
<u>Carbaryl (µg/l)</u> <u>63252</u>	<u>2.1</u>	<u>2.1</u>	<u>1.6</u>			
Chlordane (µg/l) 57749 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	2.4	0.0043	0.09	0.0040	0.0080	0.0081
Chloride (µg/l) 16887006 Human Health health criterion to maintain acceptable taste and aesthetic quality and applies at the drinking water intake. Chloride criteria do not apply in Class II transition zones (see subsection C of this section).	860,000	230,000			250,000	
Chlorine, Total Residual (µg/l) 7782505 In DGIF class i and ii trout waters (9VAC25-260-390 through 9VAC25-260-540) or waters with threatened or endangered species are subject to the halogen ban (9VAC25-260-110).	19 See 9VAC25- 260-110	11 See 9VAC25- 260-110				
Chlorine Produced Oxidant (µg/l) 7782505			13	7.5		
Chlorobenzene (µg/l) 108907					130	1,600
Chlorodibromomethane (µg/l) 124481 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					4.0	130
Chloroform (µg/l) 67663					340	11,000
2-Chloronaphthalene (µg/l) 91587					1,000	1,600

2-Chlorophenol (µg/l) 95578					81	150
Chlorpyrifos (µg/l) 2921882	0.083	0.041	0.011	0.0056		
Chromium III (µg/l) ⁵ 16065831 Freshwater values are a function of total hardness as calcium carbonate CaCO ₃ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion µg/l WER [e ^{0.8190[ln(hardness)]+3.7256}] (CF _a) Freshwater chronic criterion µg/l WER [e ^{0.8190[ln(hardness)]+0.6848}] (CF _c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140.F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF _a = 0.316 CF _c =0.860	570 (CaCO ₃ = 100)	74 (CaCO ₃ = 100)			100 (total Cr)	
Chromium VI (µg/l) ⁵ 18540299	16	11	1,100	50		
Chrysene (µg/l) 218019 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.0038 <u>0.038</u>	0.018
Copper (µg/l) ⁵ 7440508 Freshwater values are a function of total hardness as calcium carbonate CaCO ₃ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness	13 CaCO ₃ = 100	9.0 CaCO ₃ = 100	9.3 X WER	6.0 X WER	1,300	

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<p>shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</p> <p>Freshwater acute criterion (µg/l) $WER [e^{0.9422[\ln(\text{hardness})]-1.700}]$ (CF_a)</p> <p>Freshwater chronic criterion (µg/l) $WER [e^{0.8545[\ln(\text{hardness})]-1.702}]$ (CF_c)</p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F. e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.960 CF_c = 0.960</p> <p><u>Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G).</u></p> <p>Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.</p>						
<p>Cyanide, Free (µg/l) 57125</p>	22	5.2	1.0	1.0	[140 4.2]	[16,000 480]
<p>DDD (µg/l) 72548</p> <p>Known or suspected carcinogen; human health criteria at risk level 10⁻⁵.</p>					0.0031	0.0031
<p>DDE (µg/l) 72559</p> <p>Known or suspected carcinogen; human health criteria at risk level 10⁻⁵.</p>					0.0022	0.0022
<p>DDT (µg/l) 50293</p> <p>Known or suspected carcinogen; human health criteria at risk level 10⁻⁵.</p> <p>Total concentration of DDT and metabolites shall not exceed aquatic life criteria.</p>	1.1	0.0010	0.13	0.0010	0.0022	0.0022

Demeton (µg/l) 8065483		0.1		0.1		
Diazinon (µg/l) 333415	0.17	0.17	0.82	0.82		
Dibenz (a, h) anthracene (µg/l) 53703 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
1,2-Dichlorobenzene (µg/l) 95501					420	1,300
1,3-Dichlorobenzene (µg/l) 541731					320	960
1,4 Dichlorobenzene (µg/l) 106467					63	190
3,3 Dichlorobenzidine (µg/l) 91941 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.21	0.28
Dichlorobromomethane (µg/l) 75274 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					5.5	170
1,2 Dichloroethane (µg/l) 107062 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					3.8	370
1,1 Dichloroethylene (µg/l) 75354					330	7,100
1,2-trans-dichloroethylene (µg/l) 156605					140	10,000
2,4 Dichlorophenol (µg/l) 120832					77	290
2,4 Dichlorophenoxy acetic acid (2,4-D) (µg/l) 94757					100	
1,2-Dichloropropane (µg/l) 78875 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					5.0	150

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1,3-Dichloropropene (µg/l) 542756 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					3.4	210
Dieldrin (µg/l) 60571 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	0.24	0.056	0.71	0.0019	0.00052	0.00054
Diethyl Phthalate (µg/l) 84662					17,000	44,000
2,4 Dimethylphenol (µg/l) 105679					380	850
Dimethyl Phthalate (µg/l) 131113					270,000	1,100,000
Di-n-Butyl Phthalate (µg/l) 84742					2,000	4,500
2,4 Dinitrophenol (µg/l) 51285					69	5,300
2-Methyl-4,6-Dinitrophenol (µg/l) 534521					13	280
2,4 Dinitrotoluene (µg/l) 121142 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					1.1	34
Dioxin 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (µg/l) 1746016					5.0 E-8	5.1 E-8
1,2-Diphenylhydrazine (µg/l) 122667 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.36	2.0
Dissolved Oxygen (µg/l) (See 9VAC25-260-50)						
Alpha-Endosulfan (µg/l) 959988 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	62	89

Beta-Endosulfan (µg/l) 33213659 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	62	89
Endosulfan Sulfate (µg/l) 1031078					62	89
Endrin (µg/l) 72208	0.086	0.036	0.037	0.0023	0.059	0.060
Endrin Aldehyde (µg/l) 7421934					0.29	0.30
Ethylbenzene (µg/l) 100414					530	2,100
Fecal Coliform (see 9VAC25-260-160)						
Fluoranthene (µg/l) 206440					130	140
Fluorene (µg/l) 86737					1,100	5,300
Foaming Agents (µg/l) Criterion measured as methylene blue active substances. Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					500	
Guthion (µg/l) 86500		0.01		0.01		
Heptachlor (µg/l) 76448 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	0.52	0.0038	0.053	0.0036	0.00079	0.00079
Heptachlor Epoxide (µg/l) 1024573 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	0.52	0.0038	0.053	0.0036	0.00039	0.00039
Hexachlorobenzene (µg/l) 118741 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.0028	0.0029

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Hexachlorobutadiene (µg/l) 87683 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					4.4	180
Hexachlorocyclohexane Alpha-BHC (µg/l) 319846 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.026	0.049
Hexachlorocyclohexane Beta-BHC (µg/l) 319857 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.091	0.17
Hexachlorocyclohexane (µg/l) (Lindane) Gamma-BHC 58899 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	0.95		0.16		0.98	1.8
Hexachlorocyclopentadiene (µg/l) 77474					40	1,100
Hexachloroethane (µg/l) 67721 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					[14 5.0]	[33 12]
Hydrogen sulfide (µg/l) 7783064		2.0		2.0		
Indeno (1,2,3,-cd) pyrene (µg/l) 193395 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.038	0.18
Iron (µg/l) 7439896 Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					300	

Isophorone (µg/l) 78591 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					350	9,600
Kepone (µg/l) 143500		zero		zero		
Lead (µg/l) ⁵ 7439921 Freshwater values are a function of total hardness as calcium carbonate CaCO ₃ mg/l and the water effect ratio. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [e ^{1.273[ln(hardness)]-1.084}](CF _a) Freshwater chronic criterion (µg/l) WER [e ^{1.273[ln(hardness)]-3.259}](CF _c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF _a = 1.46203-[(ln hardness)(0.145712)] CF _c = 1.46203-[(ln hardness)(0.145712)]	120 <u>94</u> CaCO ₃ = 100	44 <u>11</u> CaCO ₃ = 100	[240 <u>230</u>] X WER	[9.3 <u>8.8</u>] X WER	15	
Malathion (µg/l) 121755		0.1		0.1		
Manganese (µg/l) 7439965 Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					50	

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Mercury ($\mu\text{g/l}$) ⁵ 7439976	1.4	0.77	1.8	0.94		
Methyl Bromide ($\mu\text{g/l}$) 74839					47	1,500
Methyl Mercury (Fish Tissue Criterion mg/kg) ⁸ 22967926					0.30	0.30
Methylene Chloride ($\mu\text{g/l}$) 75092 Known or suspected carcinogen; human health criteria at risk level 10^{-5} ; Synonym = Dichloromethane					[46 170]	[5,900 22,000]
Methoxychlor ($\mu\text{g/l}$) 72435		0.03		0.03	100	
Mirex ($\mu\text{g/l}$) 2385855		zero		zero		
Nickel ($\mu\text{g/l}$) ⁵ 744002 Freshwater values are a function of total hardness as calcium carbonate CaCO_3 mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion ($\mu\text{g/l}$) WER $[e^{\{0.8460[\ln(\text{hardness})] + 1.312\}}]$ (CF _a) Freshwater chronic criterion ($\mu\text{g/l}$) WER $[e^{\{0.8460[\ln(\text{hardness})] - 0.8840\}}]$ (CF _c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF _a = 0.998 CF _c = 0.997	180 $\text{CaCO}_3 =$ 100	20 $\text{CaCO}_3 =$ 100	74 X WER	8.2 X WER	610	4,600

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Nitrate as N (µg/l) 14797558					10,000	
Nitrobenzene (µg/l) 98953					[17 68]	[690 2,800]
N-Nitrosodimethylamine (µg/l) 62759 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.0069	30
N-Nitrosodiphenylamine (µg/l) 86306 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					33	160 60
N-Nitrosodi-n-propylamine (µg/l) 621647 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					0.050	5.1
Nonylphenol (µg/l) 1044051 84852153	28	6.6	7.0	1.7		
Parathion (µg/l) 56382	0.065	0.013				
PCB Total (µg/l) 1336363 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .		0.014		0.030	0.00064	0.00064
Pentachlorophenol (µg/l) 87865 Known or suspected carcinogen; human health criteria risk level at 10 ⁻⁵ . Freshwater acute criterion (µg/l) $e^{(1.005(\text{pH})-4.869)}$ Freshwater chronic criterion (µg/l) $e^{(1.005(\text{pH})-5.134)}$	8.7 pH = 7.0	6.7 pH = 7.0	13	7.9	[2.7 0.80]	[30 9.1]
pH See 9VAC25-260-50						
Phenol (µg/l) 108952					10,000	860,000

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Phosphorus Elemental (µg/l) 7723140				0.10		
Pyrene (µg/l) 129000					830	4,000
Radionuclides Gross Alpha Particle Activity (pCi/L) Beta Particle & Photon Activity (mrem/yr) (formerly man-made radionuclides) Combined Radium 226 and 228 (pCi/L) Uranium (µg/L)					15 4 5 30	
Selenium (µg/l) ⁵ 7782492 WER shall not be used for freshwater acute and chronic criteria. Freshwater criteria expressed as total recoverable.	20	5.0	290 X WER	71 X WER	170	4,200
Silver (µg/l) ⁵ 7440224 Freshwater values are a function of total hardness as calcium carbonate (CaCO ₃) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [e ^{1.72[ln(hardness)]-6.52}] (CF _a) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF _a = 0.85	3.4; CaCO ₃ = 100		1.9 X WER			

Sulfate (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					250,000	
Temperature See 9VAC25-260-50						
1,1,2,2-Tetrachloroethane (µg/l) 79345 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					1.7	40
Tetrachloroethylene (µg/l) 127184 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					[6.9 130]	[33 620]
Thallium (µg/l) 7440280					0.24	0.47
Toluene (µg/l) 108883					510	6,000
Total Dissolved Solids (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					500,000	
Toxaphene (µg/l) 8001352 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .	0.73	0.0002	0.21	0.0002	0.0028	0.0028
Tributyltin (µg/l) 60105	0.46	0.072	0.42	0.0074		
1, 2, 4 Trichlorobenzene (µg/l) 120821					35	70
1,1,2-Trichloroethane (µg/l) 79005 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					5.9	160
Trichloroethylene (µg/l) 79016 Known or suspected carcinogen; human health criteria at risk level 10 ⁻⁵ .					[25 70]	[300 82]

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2, 4, 6-Trichlorophenol ($\mu\text{g/l}$) 88062 Known or suspected carcinogen; human health criteria at risk level 10^{-5} .					14	24
2-(2, 4, 5-Trichlorophenoxy) propionic acid (Silvex) ($\mu\text{g/l}$) 93721					50	
Vinyl Chloride ($\mu\text{g/l}$) 75014 Known or suspected carcinogen; human health criteria at risk level 10^{-5} .					0.25	24
Zinc ($\mu\text{g/l}$) ⁵ 7440666 Freshwater values are a function of total hardness as calcium carbonate (CaCO_3) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion ($\mu\text{g/l}$) WER $[e^{\{0.8473[\ln(\text{hardness})]+0.884\}}]$ (CF _a) Freshwater chronic criterion ($\mu\text{g/l}$) WER $[e^{\{0.8473[\ln(\text{hardness})]+0.884\}}]$ (CF _c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = base e exponential function. <u>natural antilogarithm</u> ln = log normal function <u>natural logarithm</u> <u>CF = conversion factor a (acute) or c (chronic)</u> CF _a = 0.978 CF _c = 0.986	120 $\text{CaCO}_3 =$ 100	120 $\text{CaCO}_3 =$ 100	90 X WER	81 X WER	7,400	26,000

¹One hour average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

²Four-day average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

³Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in 9VAC25-260-390-540 through 9VAC25-260-540.

⁴Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in 9VAC25-260-390-540 ~~through~~ 9VAC25-260-540.

⁵Acute and chronic saltwater and freshwater aquatic life criteria apply to the biologically available form of the metal and apply as a function of the pollutant's water effect ratio (WER) as defined in 9VAC25-260-140 F (WER X criterion). Metals measured as dissolved shall be considered to be biologically available, or, because local receiving water characteristics may otherwise affect the biological availability of the metal, the biologically available equivalent measurement of the metal can be further defined by determining a water effect ratio (WER) and multiplying the numerical value shown in 9VAC25-260-140 B by the WER. Refer to 9VAC25-260-140 F. Values displayed above in the table are examples and correspond to a WER of 1.0. Metals criteria have been adjusted to convert the total recoverable fraction to dissolved fraction using a conversion factor. Criteria that change with hardness use the conversion factor listed in the table above.

⁶The flows listed below are default design flows for calculating steady state ~~waste load~~ wasteload allocations unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

Aquatic Life:

Acute criteria	1Q10
Chronic criteria	7Q10
Chronic criteria (ammonia)	30Q10

Human Health:

Noncarcinogens	30Q5
Carcinogens	Harmonic mean

The following are defined for this section:

"1Q10" means the lowest flow averaged over a period of ~~one~~ 1 day which on a statistical basis can be expected to occur once every 10 climatic years.

"7Q10" means the lowest flow averaged over a period of ~~seven~~ 7 consecutive days that can be statistically expected to occur once every 10 climatic years.

"30Q5" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every ~~five~~ 5 climatic years.

"30Q10" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 10 climatic years.

"Averaged" means an arithmetic mean.

"Climatic year" means a year beginning on April 1 and ending on March 31.

⁷The criteria listed in this table are two significant digits. For other criteria that are referenced to other sections of this regulation in this table, all numbers listed as criteria values are significant.

⁸The fish tissue criterion for methylmercury applies to a concentration of 0.30 mg/kg as wet weight in edible tissue for species of fish ~~and/or~~ and shellfish resident in a waterbody that are commonly eaten in the area and have commercial, recreational, or subsistence value.

C. Application of freshwater and saltwater numerical criteria. The numerical water quality criteria listed in subsection B of this section (excluding dissolved oxygen, pH, temperature) shall be applied according to the following classes of waters (see 9VAC25-260-50) and boundary designations:

The following describes the boundary designations for Class II, (estuarine, transition zone and tidal freshwater waters) by river basin:

1. Rappahannock Basin. Tidal freshwater is from the fall line of the Rappahannock River to the upstream boundary of the transition zone including all tidal tributaries that enter the tidal freshwater Rappahannock River.

Transition zone upstream boundary – N38° 4' 56.59"/-W76° 58' 47.93" (430 feet east of Hutchinson Swamp) to N38° 5' 23.33"/-W76° 58' 24.39" (0.7 miles upstream of Peedee Creek).

Transition zone downstream boundary – N37° 58' 45.80"/-W76° 55' 28.75" (1,000 feet downstream of Jenkins Landing) to N37° 59' 20.07/-W76° 53' 45.09" (0.33 miles

CLASS OF WATERS	NUMERICAL CRITERIA
I and II (Estuarine Waters)	Saltwater criteria apply
II (Transition Zone)	More stringent of either the freshwater or saltwater criteria apply
II (Tidal Freshwater), III, IV, V, VI and VII	Freshwater criteria apply

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upstream of Mulberry Point). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from the downstream boundary of the transition zone to the mouth of the Rappahannock River (Buoy 6), including all tidal tributaries that enter the estuarine waters of the Rappahannock River.

2. York Basin. Tidal freshwater is from the fall line of the Mattaponi River at N37° 47' 20.03"/W77° 6' 15.16" (800 feet upstream of the Route 360 bridge in Aylett) to the upstream boundary of the Mattaponi River transition zone, and from the fall line of the Pamunkey River at N37° 41' 22.64"/W77° 12' 50.83" (2,000 feet upstream of Totopotomy Creek) to the upstream boundary of the Pamunkey River transition zone, including all tidal tributaries that enter the tidal freshwaters of the Mattaponi and Pamunkey Rivers.

~~Mattaponi~~ Mattaponi River transition zone upstream boundary – N37° 39' 29.65"/W76° 52' 53.29" (1,000 feet upstream of Mitchell Hill Creek) to N37° 39' 24.20"/W76° 52' 55.87" (across from Courthouse Landing).

Mattaponi River transition zone downstream boundary – N37° 32' 19.76"/W76° 47' 29.41" (old Lord Delaware Bridge, west side) to N37° 32' 13.25"/W76° 47' 10.30" (old Lord Delaware Bridge, east side).

Pamunkey River transition zone upstream boundary – N37° 32' 36.63"/W76° 58' 29.88" (Cohoke Marsh, 0.9 miles upstream of Turkey Creek) to N37° 32' 36.51"/W76° 58' 36.48" (0.75 miles upstream of creek at Cook Landing).

Pamunkey River transition zone downstream boundary – N37° 31' 57.90"/W76° 48' 38.22" (old Eltham Bridge, west side) to N37° 32' 6.25"/W76° 48' 18.82" (old Eltham Bridge, east side).

All tidal tributaries that enter the transition zones of the Mattaponi and Pamunkey Rivers are themselves in the transition zone.

Estuarine waters are from the downstream boundary of the transition zones of the Mattaponi and Pamunkey Rivers to the mouth of the York River (Tue Marsh Light) including all tidal tributaries that enter the estuarine waters of the York River.

3. James Basin. Tidal ~~Freshwater~~ freshwater is from the fall line of the James River in the City of Richmond upstream of Mayo Bridge to the upstream boundary of the transition zone, including all tidal tributaries that enter the tidal freshwater James River.

James River transition zone upstream boundary – N37° 14' 28.25"/W76° 56' 44.47" (at Tettington) to N37° 13' 38.56"/W76° 56' 47.13" (0.3 miles downstream of Sloop Point).

Chickahominy River transition zone upstream boundary – N37° 25' 44.79"/W77° 1' 41.76" (Holly Landing).

Transition zone downstream boundary – N37° 12' 7.23"/W76° 37' 34.70" (near Carters Grove Home, 1.25 miles downstream of Grove Creek) to N37° 9' 17.23"/W76° 40' 13.45" (0.7 miles upstream of Hunnicutt Creek). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from the downstream transition zone boundary to the mouth of the James River (Buoy 25) including all tidal tributaries that enter the estuarine waters of the James River.

4. Potomac Basin. Tidal ~~Freshwater~~ freshwater includes all tidal tributaries that enter the Potomac River from its fall line at the Chain Bridge (N38° 55' 46.28"/W77° 6' 59.23") to the upstream transition zone boundary near Quantico, Virginia.

Transition zone includes all tidal tributaries that enter the Potomac River from N38° 31' 27.05"/W77° 17' 7.06" (midway between Shipping Point and Quantico Pier) to N38° 23' 22.78"/W77° 1' 45.50" (one mile southeast of Mathias Point).

Estuarine waters includes all tidal tributaries that enter the Potomac River from the downstream transition zone boundary to the mouth of the Potomac River (Buoy 44B).

5. Chesapeake Bay, Atlantic Ocean, and small coastal basins. Estuarine waters include the Atlantic Ocean tidal tributaries, and the Chesapeake Bay and its small coastal basins from the Virginia state line to the mouth of the bay (a line from Cape Henry drawn through Buoys 3 and 8 to Fishermans Island), and its tidal tributaries, excluding the Potomac tributaries and those tributaries listed ~~above~~ in subdivisions 1 through 4 of this subsection.

6. Chowan River Basin. Tidal freshwater includes the Northwest River and its tidal tributaries from the Virginia-North Carolina state line to the free flowing portion, the Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately state route 611 at river mile 20.90, the Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674, and the North Landing River and its tidal tributaries from the Virginia-North Carolina state line to the Great Bridge Lock.

Transition zone includes Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina state line.

D. Site-specific modifications to numerical water quality criteria.

1. The board may consider site-specific modifications to numerical water quality criteria in subsection B of this section where the applicant or permittee demonstrates that the alternate numerical water quality criteria are sufficient to protect all designated uses (see 9VAC25-260-10) of that particular surface water segment or body.

2. Any demonstration for site-specific human health criteria shall be restricted to a reevaluation of the bioconcentration or bioaccumulation properties of the pollutant. The exceptions to this restriction are for site-specific criteria for taste, odor, and aesthetic compounds noted by double asterisks in subsection B of this section and nitrates.

3. Procedures for promulgation and review of site-specific modifications to numerical water quality criteria resulting from subdivisions 1 and 2 of this subsection.

a. Proposals describing the details of the site-specific study shall be submitted to the board's staff for approval prior to commencing the study.

b. Any site-specific modification shall be promulgated as a regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All site-specific modifications shall be listed in 9VAC25-260-310 (Special standards and requirements).

E. Variances to water quality standards.

1. A variance from numeric criteria may be granted to a discharger if it can be demonstrated that one or more of the conditions in 9VAC25-260-10 H limit the attainment of one or more specific designated uses.

a. Variances shall apply only to the discharger to whom they are granted and shall be reevaluated and either continued, modified or revoked at the time of permit issuance. At that time the permittee shall make a showing that the conditions for granting the variance still apply.

b. Variances shall be described in the public notice published for the permit. The decision to approve a variance shall be subject to the public participation requirements of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31 (Permit Regulation).

c. Variances shall not prevent the maintenance and protection of existing uses or exempt the discharger or regulated activity from compliance with other appropriate technology or water quality-based limits or best management practices.

d. Variances granted under this section shall not apply to new discharges.

e. Variances shall be submitted by the department's Division of Scientific Research or its successors to the U.S. Environmental Protection Agency for review and approval/ or disapproval.

f. A list of variances granted shall be maintained by the department's Division of Scientific Research or its successors.

2. None of the variances in this subsection shall apply to the halogen ban section (9VAC25-260-110) or temperature criteria in 9VAC25-260-50 if superseded by § 316(a) of the Clean Water Act requirements. No variances in this

subsection shall apply to the criteria that are designed to protect human health from carcinogenic and noncarcinogenic toxic effects (subsection B of this section) with the exception of the metals, and the taste, odor, and aesthetic compounds noted by double asterisks and nitrates, listed in subsection B of this section.

F. Water effect ratio.

1. A water effects ratio (WER) shall be determined by measuring the effect of receiving water (as it is or will be affected by any discharges) on the bioavailability or toxicity of a metal by using standard test organisms and a metal to conduct toxicity tests simultaneously in receiving water and laboratory water. The ratio of toxicities of the metal(s) in the two waters is the WER (toxicity in receiving water divided by toxicity in laboratory water = equals WER). Once an acceptable WER for a metal is established, the numerical value for the metal in subsection B of this section is multiplied by the WER to produce an instream concentration that will protect designated uses. This instream concentration shall be utilized in permitting decisions.

2. The WER shall be assigned a value of 1.0 unless the applicant or permittee demonstrates to the department's satisfaction in a permit proceeding that another value is appropriate, or unless available data allow the department to compute a WER for the receiving waters. The applicant or permittee is responsible for proposing and conducting the study to develop a WER. The study may require multiple testing over several seasons. The applicant or permittee shall obtain the department's Division of Scientific Research or its successor approval of the study protocol and the final WER.

3. The Permit Regulation at 9VAC25-31-230 C requires that permit limits for metals be expressed as total recoverable measurements. To that end, the study used to establish the WER may be based on total recoverable measurements of the metals.

~~4. The Environmental Protection Agency views the WER in any particular case as a site specific criterion. Therefore, the department's Division of Scientific Research or its successor shall submit the results of the study to the Environmental Protection Agency for review and approval/disapproval within 30 days of the receipt of certification from the state's Office of the Attorney General. Nonetheless, the~~ The WER is established in a permit proceeding, shall be described in the public notice associated with the permit proceeding, and applies only to the applicant or permittee in that proceeding. The department's action to approve or disapprove a WER is a case decision, not an amendment to the present regulation.

The decision to approve or disapprove a WER shall be subject to the public participation requirements of the Permit Regulation, Part IV (9VAC25-31-260 et seq.). A

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list of final WERs will be maintained by the department's Division of Scientific Research or its successor.

5. A WER shall not be used for the freshwater and saltwater chronic mercury criteria or the freshwater acute and chronic selenium criteria.

G. Biotic Ligand Model for copper. On a case-by-case basis, EPA's 2007 copper criteria (EPA-822-F-07-001) biotic ligand model (BLM) for copper may be used to determine alternate copper criteria for freshwater sites. The BLM is a bioavailability model that uses receiving water characteristics to develop site-specific criteria. Site-specific data for 10 9VAC25-260-155. Ammonia surface water quality criteria.

parameters are needed to use the BLM. These parameters are temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. If sufficient data for these parameters are available, the BLM can be used to calculate alternate criteria values for the copper criteria. The BLM would be used instead of the hardness-based criteria and takes the place of the hardness adjustment and the WER. A WER will not be applicable with the BLM.

EDITOR'S NOTE: The proposed amendments to subsections A, B, and C of 9VAC25-260-155, published in [31:22 V.A.R. 1974-1985 June 29, 2015](#), were not adopted by the State Water Control Board. Since no changes were made to these subsections, the text is removed from the final regulation.

[~~D. E.~~] The one-hour average concentration of total ammonia nitrogen (in mg N/L) in saltwater shall not exceed, more than once every three years on the average, the acute criteria below:

Acute Ammonia Saltwater Criteria
Total Ammonia Nitrogen (mg N/L)
Salinity = 10 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	231.9	159.8	110.1	75.88	52.31	36.08	24.91	17.21
7.20	146.4	100.9	69.54	47.95	33.08	22.84	15.79	10.93
7.40	92.45	63.73	43.94	30.32	20.94	14.48	10.03	6.97
7.60	58.40	40.28	27.80	19.20	13.28	9.21	6.40	4.47
7.80	36.92	25.48	17.61	12.19	8.45	5.88	4.11	2.89
8.00	23.37	16.15	11.18	7.76	5.40	3.78	2.66	1.89
8.20	14.81	10.26	7.13	4.97	3.48	2.46	1.75	1.27
8.40	9.42	6.54	4.57	3.20	2.27	1.62	1.18	0.87
8.60	6.01	4.20	2.95	2.09	1.50	1.09	0.81	0.62
8.80	3.86	2.72	1.93	1.39	1.02	0.76	0.58	0.46
9.00	2.51	1.79	1.29	0.95	0.71	0.55	0.44	0.36

Salinity = 20 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	247.6	170.5	117.5	80.98	55.83	38.51	26.58	18.36
7.20	156.3	107.7	74.21	51.17	35.30	24.37	16.84	11.66
7.40	98.67	68.01	46.90	32.35	22.34	15.44	10.70	7.43
7.60	62.33	42.98	29.66	20.48	14.17	9.82	6.82	4.76
7.80	39.40	27.19	18.78	13.00	9.01	6.26	4.37	3.07

8.00	24.93	17.23	11.92	8.27	5.76	4.02	2.83	2.01
8.20	15.80	10.94	7.59	5.29	3.70	2.61	1.86	1.34
8.40	10.04	6.97	4.86	3.41	2.41	1.72	1.24	0.91
8.60	6.41	4.47	3.14	2.22	1.59	1.15	0.85	0.65
8.80	4.11	2.89	2.05	1.47	1.07	0.80	0.61	0.48
9.00	2.67	1.90	1.36	1.00	0.75	0.57	0.46	0.37

Salinity = 30 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	264.6	182.3	125.6	86.55	59.66	41.15	28.39	19.61
7.20	167.0	115.1	79.31	54.68	37.71	26.03	17.99	12.45
7.40	105.5	72.68	50.11	34.57	23.87	16.50	11.42	7.92
7.60	66.61	45.93	31.69	21.88	15.13	10.48	7.28	5.07
7.80	42.10	29.05	20.07	13.88	9.62	6.68	4.66	3.27
8.00	26.63	18.40	12.73	8.83	6.14	4.29	3.01	2.13
8.20	16.88	11.68	8.10	5.64	3.94	2.78	1.97	1.42
8.40	10.72	7.44	5.18	3.63	2.56	1.82	1.31	0.96
8.60	6.83	4.77	3.34	2.36	1.69	1.22	0.90	0.68
8.80	4.38	3.08	2.18	1.56	1.13	0.84	0.64	0.50
9.00	2.84	2.01	1.45	1.06	0.79	0.60	0.47	0.39

To calculate total ammonia nitrogen acute criteria values in saltwater at different pH and temperature values than those listed in this subsection, use the following formulas:

$$I = \frac{19.9273S}{(1000 - 1.005109S)}$$

Where I = molal ionic strength of water

S = Salinity ppt (g/kg)

The regression model used to relate I to pKa (negative log of the ionization constant) is

$$pKa = 9.245 + 0.138(I)$$

pKa as defined by these equations is at 298 degrees Kelvin (25°C). T °Kelvin = °C + 273

To correct for other temperatures:

$$pKa^S_T = pKa^S_{298} + 0.0324(298 - T^{\circ}\text{Kelvin})$$

The unionized ammonia fraction (UIA) is given by:

$$UIA = \frac{1}{1 + 10^{(pKa^S_T - pH)}}$$

The acute ammonia criterion in saltwater is given by:

$$\text{Acute} = \frac{0.233}{UIA}$$

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Multiply the acute value by ~~0.822~~ 0.822 to get the ammonia-N acute criterion.

[E. ~~5~~] The 30-day average concentration of total ammonia nitrogen (in mg N/L) in saltwater shall not exceed, more than once every three years on the average, the chronic criteria below:

Chronic Ammonia Saltwater Criteria
Total Ammonia Nitrogen (mg N/L)
Salinity = 10 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	34.84	24.00	16.54	11.40	7.86	5.42	3.74	2.59
7.20	21.99	15.15	10.45	7.20	4.97	3.43	2.37	1.64
7.40	13.89	9.57	6.60	4.55	3.15	2.18	1.51	1.05
7.60	8.77	6.05	4.18	2.88	2.00	1.38	0.96	0.67
7.80	5.55	3.83	2.65	1.83	1.27	0.88	0.62	0.43
8.00	3.51	2.43	1.68	1.17	0.81	0.57	0.40	0.28
8.20	2.23	1.54	1.07	0.75	0.52	0.37	0.26	0.19
8.40	1.41	0.98	0.69	0.48	0.34	0.24	0.18	0.13
8.60	0.90	0.63	0.44	0.31	0.23	0.16	0.12	0.09
8.80	0.58	0.41	0.29	0.21	0.15	0.11	0.09	0.07
9.00	0.38	0.27	0.19	0.14	0.11	0.08	0.07	0.05

Salinity = 20 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	37.19	25.62	17.65	12.16	8.39	5.78	3.99	2.76
7.20	23.47	16.17	11.15	7.69	5.30	3.66	2.53	1.75
7.40	14.82	10.22	7.04	4.86	3.36	2.32	1.61	1.12
7.60	9.36	6.46	4.46	3.08	2.13	1.47	1.02	0.71
7.80	5.92	4.08	2.82	1.95	1.35	0.94	0.66	0.46
8.00	3.74	2.59	1.79	1.24	0.86	0.60	0.43	0.30
8.20	2.37	1.64	1.14	0.79	0.56	0.39	0.28	0.20
8.40	1.51	1.05	0.73	0.51	0.36	0.26	0.19	0.14
8.60	0.96	0.67	0.47	0.33	0.24	0.17	0.13	0.10
8.80	0.62	0.43	0.31	0.22	0.16	0.12	0.09	0.07
9.00	0.40	0.28	0.20	0.15	0.11	0.09	0.07	0.06

Salinity = 30 g/kg

pH	Temperature °C							
	0	5	10	15	20	25	30	35
7.00	39.75	27.38	18.87	13.00	8.96	6.18	4.27	2.95

7.20	25.09	17.29	11.91	8.21	5.67	3.91	2.70	1.87
7.40	15.84	10.92	7.53	5.19	3.59	2.48	1.72	1.19
7.60	10.01	6.90	4.76	3.29	2.27	1.57	1.09	0.76
7.80	6.32	4.36	3.01	2.08	1.44	1.00	0.70	0.49
8.00	4.00	2.76	1.91	1.33	0.92	0.64	0.45	0.32
8.20	2.53	1.75	1.22	0.85	0.59	0.42	0.30	0.21
8.40	1.61	1.12	0.78	0.55	0.38	0.27	0.20	0.14
8.60	1.03	0.72	0.50	0.35	0.25	0.18	0.14	0.10
8.80	0.66	0.46	0.33	0.23	0.17	0.13	0.10	0.08
9.00	0.43	0.30	0.22	0.16	0.12	0.09	0.07	0.06

To calculate total ammonia nitrogen chronic criteria values in saltwater at different pH and temperature values than those listed in this subsection, use the following formulas:

$$I = \frac{19.9273S}{(1000 - 1.005109S)}$$

Where I = molal ionic strength of water

S = Salinity ppt (g/kg)

The regression model used to relate I to pKa (negative log of the ionization constant) is

$$pKa = 9.245 + 0.138(I)$$

pKa as defined by these equations is at 298 degrees Kelvin (25°C). T °Kelvin = °C + 273

To correct for other temperatures:

$$pKa^S_T = pKa^S_{298} + 0.0324(298 - T^{\circ}\text{Kelvin}) - 0.0324(T^{\circ}\text{Kelvin} - 298)$$

The unionized ammonia fraction (UIA) is given by:

$$UIA = \frac{1}{1 + 10^{(pKa^S_T - pH)}}$$

The chronic ammonia criterion in saltwater is given by:

$$\text{Chronic} = \frac{0.035}{UIA}$$

Multiply the chronic value by 0.822 to get the ammonia-N chronic criterion.

¹The default design flow for calculating steady state wasteload allocations for the acute ammonia criterion for freshwater is the 1Q10 (see 9VAC25-260-140 B footnote 10) unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

²The default design flow for calculating steady state wasteload allocations for the chronic ammonia criterion for freshwater is the 30Q10 (see 9VAC25-260-140 B footnote 10) unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

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9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.

A. Dissolved oxygen. The dissolved oxygen criteria in the below table apply to all Chesapeake Bay waters according to their specified designated use and supersede the dissolved oxygen criteria in 9VAC25-260-50.

Designated Use	Criteria Concentration/Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean \geq 6 mg/l (tidal habitats with 0-0.5 ppt salinity)	February 1 - May 31
	Instantaneous minimum \geq 5 mg/l	
Open water ¹	30 day mean \geq 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	year-round ²
	30 day mean \geq 5 mg/l (tidal habitats with $>$ 0.5 ppt salinity)	
	7 day mean \geq 4 mg/l	

	Instantaneous minimum \geq 3.2 mg/l at temperatures $<$ 29°C	
	Instantaneous minimum \geq 4.3 mg/l at temperatures \geq 29°C	
Deep water	30 day mean \geq 3 mg/l	June 1 - September 30
	1 day mean \geq 2.3 mg/l	
	Instantaneous minimum \geq 1.7 mg/l	
Deep channel	Instantaneous minimum \geq 1 mg/l	June 1 - September 30

¹In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9VAC25-260-30 A 2.

²Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1-September 30) and nonsummer (October 1-May 31) months.

B. Submerged aquatic vegetation and water clarity. Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any one of the following criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres ¹	Percent Light-Through-Water ²	Water Clarity Acres ¹	Temporal Application
Shallow Water Submerged Aquatic Vegetation Use water submerged aquatic vegetation use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	4	13%	10	April 1 - October 31
	RPPMH	1700	22%	5000	April 1 - October 31
	CRRMH	768	22%	1,920	April 1 - October 31
	PIAMH	3,479	22%	8,014	April 1 - October 31
MPNTF	85	13%	213	April 1 - October 31	

MPNOH	-	-	-	-
PMKTF	187	13%	468	April 1 - October 31
PMKOH	-	-	-	-
YRKMH	239	22%	598	April 1 - October 31
YRKPH	2,793	22%	6,982	March 1 - November 30
MOBPH	15,901	22%	33,990	March 1 - November 30
JMSTF2	200	13%	500	April 1 - October 31
JMSTF1	1000	13%	2500	April 1 - October 31
APPTF	379	13%	948	April 1 - October 31
JMSOH	15	13%	38	April 1 - October 31
CHKOH	535	13%	1,338	April 1 - October 31
JMSMH	200	22%	500	April 1 - October 31
JMSPH	300	22%	750	March 1 - November 30
WBEMH	-	-	-	-
SBEMH	-	-	-	-
EBEMH	-	-	-	-
ELIPH	-	-	-	-
LYNPH	107	22%	268	March 1 - November 30
POCOH	-	-	-	-
POCMH	4,066	22%	9,368	April 1 - October 31
TANMH	13,579	22%	22,064	April 1 - October 31

¹The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

²Percent ~~Light through Water~~ ~~light-through-water~~ = $100e^{(-K_dZ)}$ where K_d is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where $K_d = 1.45/\text{secchi depth}$. Z = depth at location of measurement of K_d .

C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application	
Open Water <u>water</u>	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life, or render tidal waters unsuitable for	March 1 - September 30	the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed

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potentially harmful to aquatic life or humans or aesthetically objectionable conditions.
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*See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.

D. Implementation.

1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions, Decisions and Rationales: 1983–2003, CBP/TRS 268/04, EPA 903-R-04-008, Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed below and shall be used as the spatial assessment unit to determine attainment of the criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name ¹	Chesapeake Bay Segment Description	Segment Name ¹
Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1
Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH
Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rappahannock River	RPPOH	Western Branch Elizabeth River	WBEMH

Lower Rappahannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH
Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

¹First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline, and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

2. The assessment period shall be the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

3. Attainment of these criteria shall be assessed through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use. The reference curves and procedures to be followed are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and the 2004 (EPA 903-R-03-002 October 2004), 2007 (CBP/TRS 285-07, EPA 903-R-07-003), 2007 (CBP/TRS 288/07, EPA 903-R-07-005), 2008 (CBP/TRS 290-08, EPA 903-R-08-001), and 2010 (CBP/TRS 301-10, EPA

903-R-10-002) addenda. An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.

9VAC25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.

A. The criteria in subsection B of this section apply to the man-made lakes and reservoirs listed in this section. Additional man-made lakes and reservoirs may be added as new reservoirs are constructed or monitoring data become available from outside groups or future agency monitoring.

B. Whether or not algicide treatments are used, the chlorophyll a criteria apply to all waters on the list. The total phosphorus criteria apply only if a specific man-made lake or reservoir received algicide treatment during the monitoring and assessment period of April 1 through October 31.

The 90th percentile of the chlorophyll a data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the chlorophyll a criterion for that ~~water body~~ waterbody in each of the two most recent monitoring years that chlorophyll a data are available. For a ~~water body~~ waterbody that received algicide treatment, the median of the total phosphorus data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the total phosphorus criterion in each of the two most recent monitoring years that total phosphorus data are available.

Monitoring data used for assessment shall be from sampling location(s) within the lacustrine portion where observations are evenly distributed over the seven months from April 1 through October 31 and are in locations that are representative, either individually or collectively, of the condition of the man-made lake or reservoir.

Beaver Creek Reservoir	Albemarle County	35	40
Beaverdam Creek Reservoir (Beaverdam Reservoir)	Bedford County	35	40
Beaverdam Reservoir	Loudoun County	35	40
Bedford Reservoir (Stony Creek Reservoir)	Bedford County	35	40
Big Cherry Lake	Wise County	35	40
Breckenridge Reservoir	Prince William County	35	40
Briery Creek Lake	Prince Edward County	35	40
Brunswick Lake (County Pond)	Brunswick County	35	40
Burke Lake	Fairfax County	60	40
Carvin Cove Reservoir	Botetourt County	35	40
Cherrystone Reservoir	Pittsylvania County	35	40
Chickahominy Lake	Charles City County	35	40
Chris Green Lake	Albemarle County	35	40
Claytor Lake	Pulaski County	25	20
Clifton Forge Reservoir (Smith Creek Reservoir)	Alleghany County	35	20
Coles Run Reservoir	Augusta County	10	10
Curtis Lake	Stafford County	60	40
Diascund Creek Reservoir	New Kent County	35	40
Douthat Lake	Bath County	25	20

Man-made Lake or Reservoir Name	Location	Chlorophyll a (µg/L)	Total Phosphorus (µg/L)
Able Abel Lake	Stafford County	35	40
Airfield Pond	Sussex County	35	40
Amelia Lake	Amelia County	35	40
Aquia Reservoir (Smith Lake)	Stafford County	35	40
Bark Camp Lake (Corder Bottom Lake, Lee/Scott/Wise Lake)	Scott County	35	40

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Elkhorn Lake	Augusta County	10	10	Keysville Reservoir	Charlotte County	35	40
Emporia Lake (Meherrin Reservoir)	Greensville County	35	40	Lake Albemarle	Albemarle County	35	40
Fairystone Lake	Henry County	35	40	Lake Anna	Louisa County	25	30
Falling Creek Reservoir	Chesterfield County	35	40	Lake Arrowhead	Page County	35	40
Fluvanna Ruritan Lake	Fluvanna County	60	40	Lake Burnt Mills	Isle of Wight County	60	40
Fort Pickett Reservoir	Nottoway/Brunswick County	35	40	Lake Chesdin	Chesterfield County	35	40
Gatewood Reservoir	Pulaski County	35	40	Lake Cohoon	Suffolk City	60	40
Georges Creek Reservoir	Pittsylvania County	35	40	Lake Conner	Halifax County	35	40
Goose Creek Reservoir	Loudoun County	35	40	Lake Frederick	Frederick County	35	40
Graham Creek Reservoir	Amherst County	35	40	Lake Gaston, (Virginia portion)	Brunswick County	25	30
Great Creek Reservoir	Lawrenceville	35	40	Lake Gordon	Mecklenburg County	35	40
Harrison Lake	Charles City County	35	40	Lake Keokee	Lee County	35	40
Harwood Mills Reservoir	York County	60	40	Lake Kilby	Suffolk City	60	40
Hidden Valley Lake	Washington County	35	40	Lake Lawson	Virginia Beach City	60	40
Hogan Lake	Pulaski County	35	40	Lake Manassas	Prince William County	35	40
Holiday Lake	Appomattox County	35	40	Lake Meade	Suffolk City	60	40
Hungry Mother Lake	Smyth County	35	40	Lake Moomaw	Bath County	10	10
Hunting Run Reservoir	Spotsylvania County	35	40	Lake Nelson	Nelson County	60	40
J. W. Flannagan Reservoir	Dickenson County	25	20	Lake Nottoway (Lee Lake, Nottoway Lake)	Nottoway County	35	40
Kerr Reservoir, Virginia portion (Buggs Island Lake)	Halifax County	25	30	Lake Orange	Orange County	60	40
				Lake Pelham	Culpeper County	35	40

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Lake Prince	Suffolk City	60	40	Modest Creek Reservoir	Town of Victoria	35	40
Lake Robertson	Rock-bridge County	35	40	Motts Run Reservoir	Spotsylvania County	25	30
Lake Smith	Virginia Beach City	60	40	Mount Jackson Reservoir	Shenandoah County	35	40
Lake Whitehurst	Norfolk City	60	40	Mountain Run Lake	Culpeper County	35	40
Lake Wright	Norfolk City	60	40	Ni Reservoir	Spotsylvania County	35	40
Lakeview Reservoir	Chesterfield County	35	40	North Fork Pound Reservoir	Wise County	35	40
Laurel Bed Lake	Russell County	35	40	Northeast Creek Reservoir	Louisa County	35	40
Lee Hall Reservoir (Newport News Reservoir)	Newport News City	60	40	Occoquan Reservoir	Fairfax County	35	40
Leesville Reservoir	Bedford County	25	30	Pedlar Lake	Amherst County	25	20
Little Creek Reservoir	Virginia Beach City	60	40	Philpott Reservoir	Henry County	25	30
Little Creek Reservoir	James City County	25	30	Phelps Creek Reservoir (Brookneal Reservoir)	Campbell County	35	40
Little River Reservoir	Montgomery County	35	40	<u>Powhatan Lakes (Upper and Lower)</u>	<u>Powhatan County</u>	<u>35</u>	<u>40</u>
Lone Star Lake F (Crystal Lake)	Suffolk City	60	40	Ragged Mountain Reservoir	Albemarle County	35	40
Lone Star Lake G (Crane Lake)	Suffolk City	60	40	Rivanna Reservoir (South Fork Rivanna Reservoir)	Albemarle County	35	40
Lone Star Lake I (Butler Lake)	Suffolk City	60	40	Roaring Fork	Pittsylvania County	35	40
Lunga Reservoir	Prince William County	35	40	Rural Retreat Lake	Wythe County	35	40
Lunenburg Beach Lake (Victoria Lake)	Town of Victoria	35	40	Sandy River Reservoir	Prince Edward County	35	40
Martinsville Reservoir (Beaver Creek Reservoir)	Henry County	35	40	Shenandoah Lake	Rockingham County	35	40
Mill Creek Reservoir	Amherst County	35	40				

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Silver Lake	Rockingham County	35	40
Smith Mountain Lake	Bedford County	25	30
South Holston Reservoir	Washington County	25	20
Speights Run Lake	Suffolk City	60	40
Spring Hollow Reservoir	Roanoke County	25	20
Staunton Dam Lake	Augusta County	35	40
Stonehouse Creek Reservoir	Amherst County	60	40
Strasburg Reservoir	Shenandoah County	35	40
Stumpy Lake	Virginia Beach	60	40
Sugar Hollow Reservoir	Albemarle County	25	20
Swift Creek Lake	Chesterfield County	35	40
Swift Creek Reservoir	Chesterfield County	35	40
Switzer Lake	Rockingham County	10	10
Talbott Reservoir	Patrick County	35	40
Thrashers Creek Reservoir	Amherst County	35	40
Totier Creek Reservoir	Albemarle County	35	40
Townes Reservoir	Patrick County	25	20
Troublesome Creek Reservoir	Buckingham County	35	40
Waller Mill Reservoir	York County	25	30
Western Branch Reservoir	Suffolk City	25	20

Wise Reservoir	Wise County	25	20
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C. When the board determines that the applicable criteria in subsection B of this section for a specific man-made lake or reservoir are exceeded, the board shall consult with the Department of Game and Inland Fisheries regarding the status of the fishery in determining whether or not the designated use for that ~~water body~~ waterbody is being attained. If the designated use of the subject ~~water body~~ waterbody is not being attained, the board shall assess the ~~water body~~ waterbody as impaired in accordance with § 62.1-44.19:5 of the Code of Virginia. If the designated use is being attained, the board shall assess the ~~water body~~ waterbody as impaired in accordance with § 62.1-44.19:5 of the Code of Virginia until site-specific criteria are adopted and become effective for that ~~water body~~ waterbody.

D. If the nutrient criteria specified for a man-made lake or reservoir in subsection B of this section do not provide for the attainment and maintenance of the water quality standards of downstream waters as required in 9VAC25-260-10 C, the nutrient criteria herein may be modified on a site-specific basis to protect the water quality standards of downstream waters.

Part VII

Special Standards and Scenic Rivers Listings

9VAC25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation classifications are established by the State Virginia Department of Health, the following criteria for fecal coliform bacteria will apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per 100 milliliters (ml) of sample and the estimated 90th percentile shall not exceed an MPN of 43 per 100 ml for a 5-tube decimal dilution test or an MPN of 49 per 100 ml for a 3-tube decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in

Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD₅, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Cancelled.

d. Cancelled.

e. Cancelled.

f. Cancelled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980 meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by the board at its September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Cancelled.

i. Cancelled.

j. Cancelled.

k. Cancelled.

l. Cancelled.

m. The following effluent limitations apply to wastewater treatment facilities treating an organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this excludes discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical Oxygen <u>oxygen</u> demand 5-day	6 mg/l monthly average, with not more than 5% of individual samples to exceed 8 mg/l ₂
2. Settleable Solids <u>solids</u>	Not to exceed 0.1 ml/l monthly average ₂
3. Suspended Solids <u>solids</u>	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l ₂
4. Ammonia Nitrogen <u>nitrogen</u>	Not to exceed 2.0 mg/l monthly average as N ₂

5. Total Phosphorus <u>phosphorus</u>	Not to exceed 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc., which shall meet 0.30 mg/l monthly average and 0.50 mg/l daily maximum.
6. Other Physical <u>physical</u> and Chemical <u>chemical</u> Constituents <u>chemical constituents</u>	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Boshier and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.

p. Cancelled.

q. Cancelled.

r. Cancelled.

s. Cancelled.

t. Cancelled.

u. Maximum temperature for the New River Basin from Virginia-West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Cancelled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are

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12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y. Tidal freshwater Potomac River and tidal tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:

$$\left(\frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\frac{\text{pH} - 7.688}{7.688}}} \right) \times 1.45(10^{0.028(25 - \text{MAX})})$$

MAX = temperature in °C or 7, whichever is greater.

The default design flow for calculating steady state ~~waste load~~ wasteload allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.

z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute effects and 10.5 µg/l for protection from chronic effects applies in the following area:

Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove, Fishermans Cove and Little Creek Cove.

Hampton Roads Harbor including the waters within the boundary lines formed by I-664 (Monitor-Merrimac Memorial Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel), Willoughby Bay and the Elizabeth River and its tidal tributaries.

This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance with 9VAC25-260-140 F.

aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen concentration due to the natural oxygen depleting processes present in the extensive surrounding tidal wetlands. These criteria apply June 1 through September 30 to Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in accordance with subsection D of 9VAC25-260-185. These criteria supersede the open water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/ Duration	Temporal Application
Open Water <u>water</u>	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake Bay segment MPNTF to reflect natural conditions.

bb. The following site specific numerical chlorophyll a criteria apply March 1 through May 31 and July 1 through September 30 as seasonal means to the tidal James River (excludes tributaries) segments JMSTF2, JMSTF1, JMSOH, JMSMH, JMSPH and are implemented in accordance with subsection D of 9VAC25-260-185.

Designated Use	Chlorophyll a µ/l	Chesapeake Bay Program Segment	Temporal Application
Open Water <u>water</u>	10	JMSTF2	March 1 - May 31
	15	JMSTF1	
	15	JMSOH	
	12	JMSMH	
	12	JMSPH	
	15	JMSTF2	July 1 - September 30
	23	JMSTF1	
	22	JMSOH	
	10	JMSMH	
	10	JMSPH	

cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of ~~6~~ six meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall not exceed 40 µg/L at a depth of one meter or less.

ee. ~~Reserved.~~ Maximum temperature for these seasonally stockable trout waters is 26°C and applies May 1 through October 31.

ff. ~~Reserved.~~ Maximum temperature for these seasonally stockable trout waters is 28°C and applies May 1 through October 31.

gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the subcategory of

aquatic life that exists ~~here~~ in this river section as a result of the hydrologic modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture River, aquatic life conditions are expected to gradually recover and meet the general aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies May 1 through October 31.

9VAC25-260-390. Potomac River Basin (Potomac River Subbasin).

Potomac River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Tidal tributaries of the Potomac River from Smith Point to Upper Machodoc Creek (Baber Point).
1a	III		All free flowing portions of tributaries to the Potomac River from Smith Point to the Route 301 Bridge in King George County unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a [Lodge Creek and its tributaries from the head of tidal waters to their headwaters.] <u>Mattox Creek and its tributaries from the head of tidal waters to their headwaters.</u> <u>Monroe Creek and tributaries from the head of tidal waters at Route 658 to their headwaters.</u> Pine Hill Creek and its tributaries from the confluence with Rosier Creek to their headwaters. <u>Popes Creek and Canal Swamp (a tributary to the tidal portion of Popes Creek) and their tributaries from the head of tidal waters to their respective headwaters.</u> [Thompson Branch and its tributaries from the head of tidal waters to their headwaters.]
1b	III	b	All free flowing portions of tributaries to the Potomac River from the Route 301 Bridge in King George County to, and including, Potomac Creek, unless otherwise designated in this chapter.
1c	III	PWS,b	Potomac Creek and its tributaries from the Stafford County water supply dam (Able <u>(Abel</u> Lake Reservoir) to their headwaters.
2	II	a	Tidal Upper Machodoc Creek and the tidal portions of its tributaries.
2a	III		Free flowing portions of Upper Machodoc Creek and its tributaries.
3	II	b	Tidal portions of the tributaries to the Potomac River from the Route 301 Bridge in King George County to Marlboro Point.
4	II	b, d	Tidal portions of the tributaries to the Potomac River from Marlboro Point to Brent Point (to include Aquia Creek and its tributaries).
4a	III	b, d	Free flowing portions of tributaries to the Potomac River in Section 4 up to the Aquia Sanitary District Water Impoundment.

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4b	III	PWS,b,-d	Aquia Creek from the Aquia Sanitary District Water Impoundment, and other tributaries into the impoundment, including Beaverdam Run and the Lunga Reservoir upstream to their headwaters.
5	II	b	Tidal portions of tributaries to the Potomac River from Brent Point to Shipping Point, including tidal portions of Chopawamsic Creek and its tidal tributaries.
5a	III	b	Free flowing portions of Chopawamsic Creek and its tributaries <u>upstream</u> to Quantico Marine Base water supply dam.
5b	III	PWS,b	Chopawamsic Creek and its tributaries above the Quantico Marine Base water supply intakes at the Gray and Breckenridge Reservoirs to their headwaters.
6	II	b, y	Tidal portions of tributaries to the Potomac River from Shipping Point to Chain Bridge.
7	III	b	Free flowing portions of tributaries to the Potomac River from Shipping Point to Chain Bridge, unless otherwise designated in this chapter.
7a	III	g	Occoquan River and its tributaries to their headwaters above Fairfax County Water Authority's water supply impoundment, unless otherwise designated in this chapter.
7b	III	PWS,g	The impounded waters of Occoquan River above the water supply dam of the Fairfax County Water Authority to backwater of the impoundment on Bull Run and Occoquan River, and the tributaries of Occoquan above the dam to points 5 miles above the dam.
7c	III	PWS,g	Broad Run and its tributaries above the water supply dam of the City of Manassas upstream to points 5 miles above the dam.
7d			(Deleted)
7e	III	PWS,g	Cedar Run and its tributaries from the Town of Warrenton's raw water intake to points 5 miles upstream (Fauquier County).
7f	III	PWS,g	The Quantico Marine Base Camp Upshur and its tributaries' raw water intake on Cedar Run (located approximately 0.2 mile above its confluence with Lucky Run) to points 5 miles upstream.
7g	III	PWS,g	The proposed impounded waters of Licking Run above the multiple purpose impoundment structure in Licking Run near Midland (Fauquier County) upstream to points 5 miles above the proposed impoundment.
7h	III	PWS,g	The proposed impounded waters of Cedar Run above the proposed multiple purpose impoundment structure on the main stem of Cedar Run near Auburn (Fauquier County), to points 5 miles above the impoundment.
8	III	PWS	Tributaries to the Potomac River in Virginia between Chain Bridge and the Monacacy River from their confluence with the Potomac upstream 5 miles, to include Goose Creek to the City of Fairfax's raw water intake, unless otherwise designated in this chapter.
8a	VI	PWS	Big Spring Creek and its tributaries in Loudoun County, from its confluence with the Potomac River upstream to their headwaters. (The temperature standard for natural trout water may be exceeded in the area above Big Spring and Little Spring at Routes 15 and 740 due to natural conditions). This section was given a PWS designation due to the Town of Leesburg's intake on the Potomac as referenced in Section 8b below .
		iii	Big Spring Creek from its confluence with the Potomac River upstream to Big Spring.
8b	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the Town of Leesburg's intake on the Potomac River, unless otherwise designated in this chapter.*
8c	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the County of Fairfax's intake on the Potomac River.*

9	III		Broad Run, Sugarland Run, Difficult Run, Tuscarora Creek, Sycoline <u>Sycolin</u> Creek, and other streams tributary to streams in Section 8 from a point 5 miles above their confluence with the Potomac River to their headwaters, unless otherwise designated in this chapter.
9a	III	PWS	All the impounded water of Goose Creek from the City of Fairfax's water supply dam upstream to backwater, and its tributaries above the dam to points 5 miles above the dam.
9b	III	PWS	The Town of Round Hill's (inactive-early 1980's) <u>1980s</u>) raw water intake at the Round Hill Reservoir, and including the two spring impoundments located northwest of the town on the eastern slope of the Blue Ridge Mountains.
9c	III	PWS	Unnamed tributary to Goose Creek, from Camp Highroad's (inactive-late 1980's) <u>1980s</u>) raw water intake (Loudoun County) located in an old quarry to its headwaters.
9d	III	PWS	Sleeter Lake (Loudoun County).
10	III		Tributaries of the Potomac River from the Monacacy River to the West Virginia-Virginia state line in Loudoun County, from their confluence with the Potomac River upstream to their headwaters, unless otherwise designated in this chapter.
10a	III	PWS	North Fork Catoctin Creek and its tributaries from Purcellville's raw water intake to their headwaters.
10b	III		South Fork Catoctin Creek and its tributaries from its confluence with the North Fork Catoctin Creek to its headwaters.
11	IV	pH-6.5-9.5	Tributaries of the Potomac River in Frederick and Clarke Counties, Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 11
	***	pH-6.5-9.5	Back Creek (upper) from Rock Enon 4 miles upstream.
	***	pH-6.5-9.5	Back Creek (lower) from Route 600 to the mouth of Hogue Creek - 2 miles.
	***	hh	Hogue Creek from Route 679 upstream 6 miles to the Forks below Route 612.
	vi	pH-6.5-9.5	Opequon Creek (in Frederick County) from its confluence with Hoge Run upstream to the point at which Route 620 first crosses the stream.
	vi	pH-6.5-9.6	Turkey Run (Frederick County) from its confluence with Opequon Creek 3.6 miles upstream.
	VI		Natural Trout Waters in Section 11
	ii	pH-6.5-9.5	Bear Garden Run from its confluence with Sleepy Creek 3.1 miles upstream.
	iii	pH-6.5-9.5	Redbud Run from its confluence with Opequon Creek 4.4 miles upstream.
11a	IV	pH-6.5-9.5	Hot Run and its tributaries from its confluence with Opequon Creek to its headwaters.
	V		Stockable Trout Waters in Section 11a
	vi	pH-6.5-9.5	Clearbrook Run from its confluence with Hot Run 2.1 miles upstream.
12	IV	ESW-6	South Branch Potomac River and its tributaries, such as Strait Creek, and the North Fork River and its tributaries from the Virginia-West Virginia state line to their headwaters.
	V		Stockable Trout Waters in Section 12
	vi		Frank Run from its confluence with the South Branch Potomac River 0.8 mile upstream.

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vii	pH-6.5-9.5	South Branch Potomac River (in Highland County) from 69.2 miles above its confluence with the Potomac River 4.9 miles upstream.
VI		Natural Trout Waters in Section 12
ii		Blights Run from its confluence with Laurel Fork (Highland County) upstream including all named and unnamed tributaries.
ii		Buck Run (Highland County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Collins Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Laurel Fork (Highland County) from 1.9 miles above its confluence with the North Fork South Branch Potomac River upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Laurel Run (Highland County) from its confluence with Strait Creek upstream including all named and unnamed tributaries.
ii		Locust Spring Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Lost Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Mullenax Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Newman Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii		Slabcamp Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Strait Creek (Highland County) from its confluence with the South Branch Potomac River upstream to the confluence of West Strait Creek.

9VAC25-260-400. Potomac River Basin (Shenandoah River Subbasin).

Shenandoah River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	pH-6.5-9.5	Shenandoah River and its tributaries in Clarke County, Virginia, from the Virginia-West Virginia state line to Lockes Landing, unless otherwise designated in this chapter.
1a	IV	PWS pH-6.5-9.5	Shenandoah River and its tributaries from river mile 24.66 (latitude 39°16'19"; longitude 77°54'33") approximately 0.7 mile downstream of the confluence of the Shenandoah River and Dog Run to 5 miles above Berryville's raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1a
	vi	pH-6.5-9.5	Chapel Run (Clarke County) from its confluence with the Shenandoah River 5.7 miles upstream.
	vi	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of the Ebenezer Church at Route 604) to its headwaters.
1b			(Deleted)

1c	IV	pH-6.5-9.5	Shenandoah River and its tributaries from a point 5 miles above Berryville's raw water intake to the confluence of the North and South Forks of the Shenandoah River.
	VI		Natural Trout Waters in Section 1c
	iii	pH-6.5-9.5	Page Brook from its confluence with Spout Run, 1 mile upstream.
	***	pH-6.5-9.5	Roseville Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of Calmes Neck at Rts <u>Routes</u> 651 and 621), 3.9 miles upstream.
	***	pH-6.5-9.5	Westbrook Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
1d			(Note: Moved to section <u>Section</u> 2b).
2	IV	EWS-12,14,15 <u>ESW-12,14,15</u>	South Fork Shenandoah River from its confluence with the North Fork Shenandoah River, upstream to a point 5 miles above the Town of Shenandoah's raw water intake and its tributaries to their headwaters in this section, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 2
	vii	pH-6.5-9.5	Bear Lithia Spring from its confluence with the South Fork Shenandoah River 0.8 miles upstream.
	vi	pH-6.5-9.5	Flint Run from its confluence with the South Fork Shenandoah River 4 miles upstream.
	***	pH-6.5-9.5	Gooney Run from the mouth to its confluence with Broad Run above Browntown (in the vicinity of Route 632).
	***	pH-6.5-9.5, hh	Hawksbill Creek from Route 675 in Luray to 1 mile above Route 631.
	VI		Natural Trout Waters in Section 2
	ii	pH-6.5-9.5	Big Creek (Page County) from its confluence with the East Branch Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Big Ugly Run from its confluence with the South Branch Naked Creek upstream including all named and unnamed tributaries.
	ii		Boone Run from 4.6 miles above its confluence with the South Fork Shenandoah River (in the vicinity <u>vicinity</u> of Route 637) upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Browns Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	ii		Cub Run (Page County) from Pitt Spring Run upstream including all named and unnamed tributaries.
	***	pH-6.5-9.5	Cub Run from its mouth to Pitt Spring Run.
	i	pH-6.5-9.5	East Branch Naked Creek from its confluence with Naked Creek at Route 759 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Fultz Run from the Park boundary (river mile 1.8) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Gooney Run (in (Warren County) from 6.6 miles above its confluence with the South Fork Shenandoah River 3.9 miles upstream.

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	ii	pH-6.5-9.5	Hawksbill Creek in the vicinity of Pine Grove at Route 624 (river mile 17.7) 1.5 miles upstream.
	ii	pH-6.5-9.5	Jeremys Run from the <u>Shenandoah</u> National Park boundary upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lands Run from its confluence with Gooney Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Little Creek (Page County) from its confluence with Big Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Little Hawksbill Creek from Route 626 upstream including all named and unnamed tributaries.
	ii		Morgan Run (Page County) from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Overall Run from its confluence with the South Fork Shenandoah River 4.8 miles upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Pass Run (Page County) from its confluence with Hawksbill Creek upstream including all named and unnamed tributaries.
	ii		Pitt Spring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Branch Naked Creek from 1.7 miles above its confluence with Naked Creek (in the vicinity of Route 607) upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Stony Run (Page County) from 1.6 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	West Branch Naked Creek from 2.1 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
2a	IV	PWS, pH-6.5-9.5	Happy Creek and Sloan Creek from Front Royal's raw water intake to its headwaters.
2b	IV	PWS	The South Fork Shenandoah River and its tributaries from the Town of Front Royal's raw water intake (at the State Route 619 bridge at Front Royal) to points 5 miles upstream.
2c			(Deleted)
2d			(Deleted)
	V		Stockable Trout Waters in Section 2d
	VI		Natural Trout Waters in Section 2d
3	IV	pH-6.5-9.5, ESW-16	South Fork Shenandoah River from 5 miles above the Town of Shenandoah's raw water intake to its confluence with the North and South Rivers and its tributaries to their headwaters in this section, and the South River and its tributaries from its confluence with the South Fork Shenandoah River to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3
	vi	pH-6.5-9.5	Hawksbill Creek (Rockingham County) from 0.8 mile above its confluence with the South Fork Shenandoah River 6.6 miles upstream.

vi	pH-6.5-9.5	Mills Creek (Augusta County) from 1.8 miles above its confluence with Back Creek 2 miles upstream.
vi	pH-6.5-9.5	North Fork Back Creek (Augusta County) from its confluence with Back Creek 2.6 miles upstream, unless otherwise designated in this chapter.
VI		Natural Trout Waters in Section 3
i	pH-6.5-9.5	Bearwallow Run from its confluence with Onemile Run upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Big Run (Rockingham County) from 3.3 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Cold Spring Branch (Augusta County) from Sengers Mountain Lake (Rhema Lake) upstream including all named and unnamed tributaries.
iv	pH-6.5-9.5	Cool Springs Hollow (Augusta County) from Route 612 upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Deep Run (Rockingham County) from 1.8 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	East Fork Back Creek from its confluence with the South Fork Back Creek upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Gap Run from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
iii		Inch Branch (Augusta County) from the dam upstream including all named and unnamed tributaries.
ii		Johns Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
iv		Jones Hollow (Augusta County) from 1.1 miles above its confluence with the South River upstream including all named and unnamed tributaries.
ii		Kennedy Creek from its confluence with the South River upstream including all named and unnamed tributaries.
iv	pH-6.5-9.5	Lee Run from 0.6 mile above its confluence with Elk Run 3.3 miles upstream.
iii	pH-6.5-9.5	Loves Run (Augusta County) from 2.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Lower Lewis Run (Rockingham County) from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Madison Run (Rockingham County) from 2.9 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Meadow Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	North Fork Back Creek (Augusta County) from river mile 2.6 (in the vicinity of its confluence with Williams Creek) upstream including all named and unnamed tributaries.

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	i	pH-6.5-9.5	Onemile Run (Rockingham County) from 1.5 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv		Orebank Creek from its confluence with Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Paine Run (Augusta County) from 1.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Robinson Hollow (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Rocky Mountain Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sawmill Run from 2.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Fork Back Creek from its confluence with Back Creek at Route 814 (river mile 2.1) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Stony Run (Augusta County) from 3.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Stony Run (Rockingham County) from 4.1 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Toms Branch (Augusta County) from 1.1 miles above its confluence with Back Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Twomile Run from 1.4 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Upper Lewis Run from 0.5 mile above its confluence with Lower Lewis Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	West Swift Run (Rockingham County) from the Route 33 crossing upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Whiteoak Run from its confluence with Madison Run upstream including all named and unnamed tributaries.
3a	IV	pH-6.5-9.5	South River from the dam above Waynesboro (all waters of the impoundment).
3b	IV	PWS	Coles Run and Mills Creek from South River Sanitary District's raw water intake to their headwaters.
	VI	PWS	Natural Trout Waters in Section 3b
	ii		Coles Run (Augusta County) from 3.9 miles above its confluence with the South River Sanitary District's raw water intake (Coles Run Dam) upstream including all named and unnamed tributaries.
	ii		Mills Creek (Augusta County) from the South River Sanitary District's raw water intake (river mile 3.8) upstream including all named and unnamed tributaries.
3c	IV	PWS pH-6.5-9.5	A tributary to Coles Run from Stuarts Draft raw water intake approximately one-half <u>0.5</u> mile south of Stuarts Draft and just off Route 610, to its headwaters.
4	IV	pH-6.5-9.5	Middle River and its tributaries from the confluence with the North River upstream to its headwaters, unless otherwise designated in this chapter.

	V		Stockable Trout Waters in Section 4
	v	pH-6.5-9.5	Barterbrook Branch from its confluence with Christians Creek 2.8 miles upstream.
	***	pH-6.5-9.5	East Dry Branch from its confluence with the Buffalo Branch to its confluence with Mountain Run.
	vi	pH-6.5-9.5	Folly Mills Creek from 2.4 miles above its confluence with Christians Creek (in the vicinity of Route 81) 4.5 miles upstream.
	VI		Natural Trout Waters in Section 4
	iv		Buffalo Branch from Route 703 upstream including all named and unnamed tributaries.
	ii		Cabin Mill Run (Augusta County) from the Camp Shenandoah Boy Scout Lake upstream including all named and unnamed tributaries.
	iv		East Dry Branch (Augusta County) from the confluence of Mountain Run upstream including all named and unnamed tributaries.
	iv		Jennings Branch (Augusta County) from the confluence of White Oak Draft upstream including all named and unnamed tributaries.
4a	IV	PWS pH-6.5-9.5	Middle River and its tributaries from Staunton's raw water intake at Gardner Spring to points 5 miles upstream.
5	IV	pH-6.5-9.5	North River and its tributaries from its confluence with the South River upstream to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5
	v	pH-6.5-9.5	Beaver Creek (Rockingham County) from its confluence with Briery Branch to the spring at a point 2.75 miles upstream.
	v	pH-6.5-9.5	Naked Creek (Augusta County) from 3.7 miles above its confluence with the North River at Route 696, 2 miles upstream.
	VI		Natural Trout Waters in Section 5
	iv		Big Run (Augusta County) from 0.9 mile above its confluence with Little River upstream including all named and unnamed tributaries.
	ii		Black Run (Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Briery Branch (Rockingham County) from river mile 6.9 upstream including all named and unnamed tributaries.
	iv		Gum Run from its mouth upstream including all named and unnamed tributaries.
	iii		Hone Quarry Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Little River from its confluence with the North River at Route 718 upstream including all named and unnamed tributaries.
	iv		Maple Spring Run from its mouth upstream including all named and unnamed tributaries.
	iv		Mines Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.

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	iv		Rocky Run (which is tributary to Briery Branch in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Rocky Run (which is tributary to Dry River in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	ii		Union Springs Run from 3 miles above its confluence with Beaver Creek upstream including all named and unnamed tributaries.
	iv		Wolf Run (Augusta County) from its confluence with Briery Branch upstream including all named and unnamed tributaries.
5a	IV	PWS pH-6.5-9.5	Silver Lake
5b	IV	PWS pH-6.5-9.5	North River and its tributaries from Harrisonburg's raw water intake at Bridgewater to points 5 miles above Bridgewater's raw water intake to include Dry River and Muddy Creek.
	V	PWS	Stockable Trout Waters in Section 5b
	v	pH-6.5-9.5	Mossy Creek from its confluence with the North River 7.1 miles upstream.
	v	pH-6.5-9.5	Spring Creek (Rockingham County) from its confluence with the North River 2 miles upstream.
5c	IV	PWS	Dry River in (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream, unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 5c
	viii		Raccoon Run (Rockingham County) from its confluence with Dry River to its headwaters.
	VI	PWS	Natural Trout Waters in Section 5c
	iv		Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream.
	iv		Dry Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Hopkins Hollow from its confluence with Peach Run upstream including all named and unnamed tributaries.
	iv		Kephart Run from its confluence with Dry River upstream including all named and unnamed tributaries.
5d	VI		Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters.
	VI		Natural Trout Waters in Section 5d
	iv		Dry River (Rockingham County) from 5 miles above Harrisonburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Laurel Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Little Laurel Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Low Place Run from its confluence with Dry River upstream including all named and unnamed tributaries.

	iv		Miller Spring Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iii		Sand Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries.
5e	VI	PWS	North River and its tributaries from Staunton Dam to their headwaters.
	VI		Natural Trout Waters in Section 5e
	iv		North River from Elkhorn Dam upstream including all named and unnamed tributaries.
6	IV	pH-6.5-9.5	North Fork Shenandoah River from its confluence with the Shenandoah River to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6
	vi	pH-6.5-9.5	Bear Run from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Bull Run (Shenandoah County) from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Falls Run from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Foltz Creek from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Little Passage Creek from its confluence with Passage Creek to the Strasburg Reservoir Dam.
	***	pH-6.5-9.5, hh	Mill Creek from Mount Jackson to Route 720 - 3.5 miles.
	vi	pH-6.5-9.5	Mountain Run from its mouth at Passage Creek to its headwaters.
	***	pH-6.5-9.5	Passage Creek from the U.S. Forest Service line (in the vicinity of Blue Hole and Buzzard Rock) 4 miles upstream.
	vi	pH-6.5-9.5	Passage Creek from 29.6 miles above its confluence with the North Fork Shenandoah River to its headwaters.
	vi	pH-6.5-9.5	Peters Mill Run from the mouth to its headwaters.
	***	pH-6.5-9.5	Shoemaker River from 612 at Hebron Church to its junction with Route 817 at the Shoemaker's <u>its</u> confluence with Slate Lick Branch.
	v	pH-6.5-9.5	Stony Creek from its confluence with the North Fork Shenandoah River to Route 682.
	***	pH-6.5-9.5	Stony Creek from Route 682 above Edinburg upstream to Basye.
	VI		Natural Trout Waters in Section 6
	ii	pH-6.5-9.5	Anderson Run (Shenandoah County) from 1.1 miles above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Beech Lick Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iii		Bible Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	ii		Camp Rader Run from its confluence with the German River upstream including all named and unnamed tributaries.

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	iv		Carr Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		Clay Lick Hollow from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Gate Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		German River (Rockingham County) from its confluence with the North Fork Shenandoah River (at Route 820) upstream including all named and unnamed tributaries.
	ii		Laurel Run (Shenandoah County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Marshall Run (Rockingham County) from 1.2 miles above its confluence with the North Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Mine Run (Shenandoah County) from its confluence with Passage Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Poplar Run (Shenandoah County) from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Rattlesnake Run (Rockingham County) from its confluence with Spruce Run upstream including all named and unnamed tributaries.
	iv		Root Run from its confluence with Marshall Run upstream including all named and unnamed tributaries.
	iv		Seventy Buck Lick Run from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Sirks Run (Spring Run) from 1.3 miles above its confluence with Crab Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Spruce Run (Rockingham County) from its confluence with Capon Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sumac Run from its confluence with the German River upstream including all named and unnamed tributaries.
6a	IV	PWS pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 6a
	vi	pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters.
6b	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Winchester raw water intake to points 5 miles upstream (to include Cedar Creek and its tributaries to their headwaters).
	V	PWS	Stockable Trout Waters in Section 6b
	***	pH-6.5-9.5	Cedar Creek (Shenandoah County) from Route 55 (river mile 23.56) to the U.S. Forest Service Boundary (river mile 32.0) - approximately 7 miles.

	v	PWS pH-6.5-9.5	Meadow Brook (Frederick County) from its confluence with Cedar Creek 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 6b
	iii	pH-6.5-9.5	Cedar Creek (Shenandoah County) from the U.S. Forest Service boundary (river mile 32.0) near Route 600 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Duck Run from its confluence with Cedar Creek upstream including all named and unnamed tributaries. Paddy Run (Frederick County) from the mouth upstream including all named and unnamed tributaries.
	***		(Paddy Run (Frederick County) from its mouth (0.0) to river mile 1.8.)
	vi**		(Paddy Run (Frederick County) from river mile 1.8 to <u>river mile</u> 8.1 - 6.3 miles.)
	iii	pH-6.5-9.5	Sulphur Springs Gap (Shenandoah County) from its confluence with Cedar Creek 1.9 miles upstream.
6c	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Strasburg's raw water intake to points 5 miles upstream.
6d	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Woodstock's raw water intake (approximately 4 <u>0.25</u> mile upstream of State Route 609 bridge near Woodstock) to points 5 miles upstream.
6e	IV	PWS pH-6.5-9.5	Smith Creek and its tributaries from New Market's raw water intake to their headwaters. Natural Trout Waters in Section 6e
	iv	pH-6.5-9.5	Mountain Run (Fridley Branch, Rockingham County) from Route 722 upstream including all named and unnamed tributaries.
6f	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Food Processors Water Coop, Inc. dam at Timberville and the Town of Broadway's intakes on Linville Creek and the North Fork Shenandoah to points 5 miles upstream.
6g	IV		Shoemaker River and its tributaries from Slate Lick Run, and including Slate Lick Run, to its headwaters. V Stockable Trout Waters in Section 6g
	***		Slate Lick Run from its confluence with the Shoemaker River upstream to the 1500 foot elevation.
	VI		Natural Trout Waters in Section 6g
	iv		Long Run (Rockingham County) from its confluence with the Shoemaker River upstream including all named and unnamed tributaries.
	iv		Slate Lick Run from the 1500 foot elevation upstream including all named and unnamed tributaries.
6h	IV	PWS pH-6.5-9.5	Unnamed tributary of North Fork Shenandoah River (on the western slope of Short Mountain opposite Mt. Jackson) from the Town of Mt. Jackson's (inactive mid-1992) raw water intake (north and east dams) to its headwaters.

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6i IV PWS pH-6.5-9.5 Little Sulfur Creek, Dan's Hollow and Horns Gully (tributaries of the North Fork Shenandoah River on the western slope of Short Mountain opposite Mt. Jackson) which served as a water supply for the Town of Edinburg until March 31, 1992, from the Edinburg intakes upstream to their headwaters.

9VAC25-260-410. James River Basin (Lower).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a,z, bb, ESW-11	James River and its tidal tributaries from Old Point Comfort - Fort Wool to the end of tidal waters (fall line, Mayo's Bridge, 14th Street, Richmond), except prohibited or spoil areas, unless otherwise designated in this chapter.
1a	III		Free flowing or nontidal portions of streams in Section 1, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a Gunns Run and its tributaries from the head of tide at river mile 2.64 to its headwaters.
1b	II	a,z	Eastern and Western Branches of the Elizabeth River and tidal portions of their tributaries from their confluence with the Elizabeth River to the end of tidal waters.
1c	III		Free flowing portions of the Eastern Branch of the Elizabeth River and its tributaries. Includes Salem Canal up to its intersection with Timberlake Road at N36°48'35.67"/W76°08'31.70".
1d	II	a,z	Southern Branch of the Elizabeth River from its confluence with the Elizabeth River to the lock at Great Bridge.
1e	III		Free flowing portions of the Western Branch of the Elizabeth River and of the Southern Branch of the Elizabeth River from their confluence with the Elizabeth River to the lock at Great Bridge.
1f	II	a	Nansemond River and its tributaries from its confluence with the James River to Suffolk (dam at Lake Meade), unless otherwise designated in this chapter.
1g	III		Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp.
	VII		<u>Swamp waters in Section 1g</u> <u>Shingle Creek and its tributaries from the head of tide (approximately 500 feet downstream of Route 13/337) to their headwaters.</u>
1h	III	PWS	Lake Prince, Lake Burnt Mills and Western Branch impoundments for Norfolk raw water supply and Lake Kilby - Cahoon Pond, Lake Meade and Lake Speight impoundments for Portsmouth raw water supply and including all tributaries to these impoundments.
	VII		Swamp waters in Section 1h Eley Swamp and its tributaries from Route 736 upstream to their headwaters.
1i	III		Free flowing portions of the Pagan River and its free flowing tributaries.
1j			(Deleted)
1k	III	PWS	Skiffes Creek Reservoir (Newport News water impoundment).
1l	III	PWS	The Lone Star lakes and impoundments in the City of Suffolk, Chuckatuck Creek watershed which serve as a water source for the City of Suffolk.

1m	III	PWS	The Lee Hall Reservoir system, near Skiffes Creek and the Warwick River, in the City of Newport News.
1n	III	PWS	Chuckatuck Creek and its tributaries from Suffolk's raw water intake (at Godwin's Millpond) to a point 5 miles upstream.
1o	II	PWS, bb	James River from City Point (Hopewell) to a point 5 miles above American Tobacco Company's raw water intake <u>upstream</u> .
1p	III	PWS,	Free flowing tributaries to section 1o.
2	III		Free flowing tributaries of the James River from Buoy 64 to Brandon and free flowing tributaries of the Chickahominy River to Walkers Dam, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2 Morris Creek and its tributaries from the head of tide at river mile 5.97 upstream to its headwaters.
2a	III	PWS	Diascund Creek and its tributaries from Newport News' <u>News's</u> raw water intake dam to its headwaters.
2b	III	PWS	Little Creek Reservoir and its tributaries from the City of Newport News impoundment dam to 5 miles upstream of the raw water intake.
3	III	m	Chickahominy River and its tributaries from Walkers Dam to Bottoms Bridge (Route 60 bridge), unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3
		m	Chickahominy River from its confluence with Toe Ink Swamp at river mile <u>river mile 43.07</u> upstream to Bottoms Bridge (Route 60).
		<u>m</u>	<u>Rumley Marsh and tributaries from the confluence of an unnamed tributary at river mile 2.61, upstream to the confluence with Beus Swamp. Beus Swamp, Piney Branch, and Pelham Swamp above the confluence of Beus Swamp are excluded.</u>
		m	White Oak Swamp and its tributaries from its confluence with the Chickahominy River to their headwaters.
3a	III	PWS,m	Chickahominy River and its tributaries from Walkers Dam to points 5 miles upstream.
4	III	m	Chickahominy River and its tributaries, unless otherwise designated in this chapter, from Bottoms Bridge (Route 60 bridge) to its headwaters.
	VII		Swamp waters in Section 4
		m	Chickahominy River from Bottoms Bridge (Route 60) upstream to its confluence with Stony Run at rivermile 71.03.
		<u>m</u>	<u>Stony Run and tributaries from the confluence with Chickahominy River to their headwaters.</u>
4a	III		Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4a Fourmile Creek and its tributaries to their headwaters.

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9VAC25-260-415. James River Basin (Lower) (Appomattox River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
5	II		Appomattox River and its tidal tributaries from its confluence with the James River to the end of tidal waters.
5a	II	PWS	Appomattox River and its tidal tributaries from its mouth to 5 miles upstream of the Virginia-American Water Company's raw water intake.
5b	III	PWS	Free flowing tributaries to section <u>Section 5a</u> .
5c	III		Appomattox River from the head of tidal waters, and free flowing tributaries to the Appomattox River, to their headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 5c Skinquarter Creek from its confluence with the Appomattox River upstream to river mile 5.27. Deep Creek from the confluence with Winningham Creek downstream to the confluence of Little Creek, a distance of 5.4 <u>of 5.4</u> river miles. <u>Winticomack Creek from its confluence with the Appomattox River to its headwaters including unnamed tributaries at river miles 1.92, 3.15, 8.77, and 11.16.</u>
5d	III		Swift Creek and its tributaries from the dam at Pocahontas State Park upstream to Chesterfield County's raw water impoundment dam.
5e	III	PWS	Swift Creek and its tributaries from Chesterfield County's raw water impoundment dam to points 5 miles upstream.
5f	III	PWS	Appomattox River and its tributaries from Appomattox River Water Authority's raw water intake located at the dam at Lake Chesdin to the headwaters of the lake.
	VII		Swamp waters in Section 5f Winticomack Creek from its confluence with the Appomattox River to its headwaters including unnamed tributaries at river miles 1.92, 3.15, 8.77, and 11.16. Winterpock Creek and its tributaries (excluding Surline Branch) from its confluence with Lake Chesdin upstream to river mile 8.47.
5g	III	PWS	The Appomattox River and its tributaries from Farnville's raw water intake (approximately 2.5 miles above the Route 15/45 bridge) to points 5 miles upstream.

9VAC25-260-440. Rappahannock River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Rappahannock River and the tidal portions of its tributaries from Stingray and Windmill Points to Route 1 Alternate Bridge at Fredericksburg.
1a	II		Hoskins Creek from the confluence with the Rappahannock River to its tidal headwaters.
2	III		Free flowing tributaries of the Rappahannock from Stingray and Windmill Points upstream to Blandfield Point, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2 Cat Point Creek and its tributaries, from their headwaters to the head of tide at river mile 10.54.

			<u>Hoskins Creek and its nontidal tributaries from the head of tidal waters to their headwaters.</u>
			[<u>Mason Mill Swamp and its tributaries from the head of tidal waters to their headwaters.</u>]
			Mount Landing Creek and its tributaries from the end of tidal waters at river mile 4.4 to their headwaters.
			Piscataway Creek and its tributaries from the confluence of Sturgeon Swamp to their headwaters.
3	III		The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to the low dam water intake at Waterloo (Fauquier County).
3a	III	PWS	The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run to points 5 miles upstream (excluding Motts Run and tributaries, which is in section <u>Section 4c</u>).
3b	III	PWS	The Rappahannock River and its tributaries from the low dam water intake at Waterloo, (Fauquier County) to points 5 miles upstream.
4	III	ESW 17,18	Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4 <u>Goldenvale Creek from the head of tidal waters near the confluence with the Rappahannock River to its headwaters.</u>
			Occupacia Creek and its tributaries from the end of tidal waters at river mile 8.89 on Occupacia Creek to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Hughes River (Madison County) from Route 231 upstream to the upper crossing of Route 707 near the confluence of Rocky Run.
	***		Robinson River from Route 231 to river mile 26.7.
	***		Rose River from its confluence with the Robinson River 2.6 miles upstream.
	***		South River from 5 miles above its confluence with the Rapidan River 3.9 miles upstream.
	VI		Natural Trout Waters in Section 4
	ii		Berry Hollow from its confluence with the Robinson River upstream including all named and unnamed tributaries.
	ii <u>ii</u>		Bolton Branch from 1.7 miles above its confluence with Hittles Mill Stream upstream including all named and unnamed tributaries.
	ii <u>ii</u>		Broad Hollow Run from its confluence with Hazel River upstream including all named and unnamed tributaries.
	i <u>i</u>		Brokenback Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	i <u>i</u>		Bush Mountain Stream from its confluence with the Conway River upstream including all named and unnamed tributaries.
	i <u>i</u>		Cedar Run (Madison County) from 0.8 mile above its confluence with the Robinson River upstream including all named and unnamed tributaries.
	i <u>i</u>		Conway River (Greene County) from the Town of Fletcher upstream including all named and unnamed tributaries.

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- ii Dark Hollow from its confluence with the Rose River upstream including all named and unnamed tributaries.
- i Devils Ditch from its confluence with the Conway River upstream including all named and unnamed tributaries.
- iii Entry Run from its confluence with the South River upstream including all named and unnamed tributaries.
- iii Garth Run from 1.9 miles above its confluence with the Rapidan River at the Route 665 crossing upstream including all named and unnamed tributaries.
- ii Hannah Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
- ii Hazel River (Rappahannock County) from the Route 707 bridge upstream including all named and unnamed tributaries.
- ii Hogcamp Branch from its confluence with the Rose River upstream including all named and unnamed tributaries.
- i Hughes River (Madison County) from the upper crossing of Route 707 near the confluence of Rocky Run upstream including all named and unnamed tributaries.
- iii Indian Run (Rappahannock County) from 3.4 miles above its confluence with the Hittles Mill Stream upstream including all named and unnamed tributaries.
- ii Jordan River (Rappahannock County) from 10.9 miles above its confluence with the Rappahannock River upstream including all named and unnamed tributaries.
- iii Kinsey Run from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
- ii Laurel Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
- ii Mill Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
- ii Negro Run (Madison County) from its confluence with the Robinson River upstream including all named and unnamed tributaries.
- ii North Fork Thornton River from 3.2 miles above its confluence with the Thornton River upstream including all named and unnamed tributaries.
- ii Piney River (Rappahannock County) from 0.8 mile above its confluence with the North Fork Thornton River upstream including all named and unnamed tributaries.
- ii Pocosin Hollow from its confluence with the Conway River upstream including all named and unnamed tributaries.
- ii Ragged Run from 0.6 mile above its confluence with Popham Run upstream including all named and unnamed tributaries.
- i Rapidan River from Graves Mill (Route 615) upstream including all named and unnamed tributaries.
- ii Robinson River (Madison County) from river mile 26.7 to river mile 29.7.
- i Robinson River (Madison County) from river mile 29.7 upstream including all named and unnamed tributaries.
- i Rose River from river mile 2.6 upstream including all named and unnamed tributaries.
- iv Rush River (Rappahannock County) from the confluence of Big Devil Stairs (approximate river mile 10.2) upstream including all named and unnamed tributaries.

	ii		Sams Run from its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		South River from 8.9 miles above its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Sprucepine Branch from its confluence with Bearwallow Creek upstream including all named and unnamed tributaries.
	i		Staunton River (Madison County) from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Strother Run from its confluence with the Rose River upstream including all named and unnamed tributaries.
	iii		Thornton River (Rappahannock County) from 25.7 miles above its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		Wilson Run from its confluence with the Staunton River upstream including all named and unnamed tributaries.
4a			(Deleted)
4b	III	PWS	The Rappahannock River and its tributaries, to include the VEPCO Canal, from Fredericksburg's (inactive May 2000) raw water intake to points 5 miles upstream.
4c	III	PWS	Motts Run and its tributaries.
4d	III		Horsepen Run and its tributaries.
4e	III	PWS	Hunting Run and its tributaries.
4f	III		Wilderness Run and its tributaries.
4g	III		Deep Run and its tributaries.
4h			(Deleted)
4i	III	PWS	Mountain Run and its tributaries from Culpeper's raw water intake to points 5 miles upstream.
4j	III	PWS	White Oak Run and its tributaries from the Town of Madison's raw water intake to points 5 miles upstream.
4k	III	PWS	Rapidan River and its tributaries from Orange's raw water intake near Poplar Run to points 5 miles upstream.
4l	III	PWS	Rapidan River and its tributaries from the Rapidan Service Authority's raw water intake (just upstream of the Route 29 bridge) upstream to points 5 miles above the intake.
4m	III	PWS	Rapidan River and its tributaries from the Wilderness Shores raw water intake (Orange County - Rapidan Service Authority) to points 5 miles upstream.

9VAC25-260-450. Roanoke River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	III	PWS	Lake Gaston and the John Kerr Reservoir in Virginia and their tributaries in Virginia, unless otherwise designated in this chapter (not including the Roanoke or the Dan Rivers). The Roanoke River Service Authority's water supply intake is in this section.
1a	III		Dockery Creek and its tributaries to their headwaters.
2	III		Dan River and its tributaries from the John Kerr Reservoir to the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line, unless otherwise designated in this chapter.

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2a	III	PWS	Dan River and its tributaries from South Boston's raw water intake to points 5 miles upstream.
2b	III	PWS	Banister River and its tributaries from Burlington Industries' inactive raw water intake (about 2000 feet downstream of Route 360) inclusive of the Town of Halifax intake at the Banister Lake dam upstream to the Pittsylvania-Halifax County line (designation for main stem and tributaries ends at the county line).
2c			(Deleted)
2d	III	PWS	Cherrystone Creek and its tributaries from Chatham's raw water intake upstream to their headwaters.
2e	III	PWS	Georges Creek from Gretna's raw water intake upstream to its headwaters.
2f	III	PWS	Banister River and its tributaries from point below its confluence with Bearskin Creek (at latitude 36°46'15"; longitude 79°27'08") just east of Route 703, upstream to their headwaters.
2g	III	PWS	Whitethorn Creek and its tributaries from its confluence with Georges Creek upstream to their headwaters.
3	III		Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N.C. <u>North Carolina</u> , unless otherwise designated in this chapter.
	III	PWS	Dan River and its tributaries from the Virginia-North Carolina state line just south of Danville to points 1.34 miles upstream and the first unnamed tributary to Hogans Creek from the Virginia-North Carolina state line to a point 0.45 mile upstream.
3a	III	PWS	Dan River and its tributaries from the Schoolfield Dam including the City of Danville's main water intake located just upstream of the Schoolfield Dam, upstream to the Virginia-North Carolina state line.
3b	IV	PWS	Cascade Creek and its tributaries.
3c	IV	PWS	Smith River and its tributaries from the Virginia-North Carolina state line to, but not including, Home Creek.
3d	VI	PWS	Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
	VI	PWS	Natural Trout Waters in Section 3d
	ii		Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
3e	IV		Philpott Reservoir, Fairystone Lake and their tributaries.
	V		Stockable Trout Waters in Section 3e
	v		Otter Creek from its confluence with Rennet Bag Creek (Philpott Reservoir) to its headwaters.
	v		Smith River (Philpott Reservoir portion) from the Philpott Dam (river mile 46.80) to river mile 61.14, just above the confluence with Small Creek.
	v		Rennet Bag Creek from its confluence with the Smith River to the confluence of Long Branch Creek.
	VI		Natural Trout Waters in Section 3e
	ii		Brogan Branch from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.

	ii		Rennet Bag Creek from the confluence of Long Branch Creek upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
3f	IV	PWS	North Mayo River and South Mayo River and their tributaries from the Virginia-North Carolina state line to points 5 miles upstream.
3g	IV		Interstate streams in the Dan River watershed above the point where the Dan crosses the Virginia-North Carolina state line just east of Draper, N.C. <u>North Carolina</u> , (including the Mayo and the Smith watersheds), unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3g
	vi		Dan River from the Virginia-North Carolina state line upstream to the Pinnacles Power House.
	***		Little Dan River from its confluence with the Dan River 7.8 miles upstream.
	v		Smith River from river mile 61.14 (just below the confluence of Small Creek), to Route 704 (river mile 69.20).
	VI		Natural Trout Waters in Section 3g
	ii		Dan River from Pinnacles Power House to Townes Dam.
	ii		Dan River from headwaters of Townes Reservoir to Talbott Dam.
	iii		Little Dan River from 7.8 miles above its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		North Prong of the North Fork Smith River from its confluence with the North Fork Smith River upstream including all named and unnamed tributaries.
	ii		North Fork Smith River from its confluence with the Smith River upstream including all named and unnamed tributaries.
	iii		Smith River from Route 704 (river mile 69.20) to Route 8 (river mile 77.55).
	ii		Smith River from Route 8 (approximate river mile 77.55) upstream including all named and unnamed tributaries.
	ii		South Mayo River from river mile 38.8 upstream including all named and unnamed tributaries.
3h	IV	PWS	South Mayo River and its tributaries from the Town of Stuart's raw water intake 0.4 mile upstream of its confluence with the North Fork Mayo River to points 5 miles upstream.
	VI		Natural Trout Waters in Section 3h
	iii		Brushy Fork from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Lily Cove Branch from its confluence with Rye Cove Creek upstream including all named and unnamed tributaries.
	iii		Rye Cove Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		South Mayo River from river mile 33.8 upstream including all named and unnamed tributaries.

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3i	IV	PWS	Hale Creek and its tributaries from the Fairy Stone State Park's raw water intake 1.7 miles from its confluence with Fairy Stone Lake upstream to its headwaters.
3j	VI	PWS	Smith River and its tributaries from the Henry County Public Service Authority's raw water intake about 0.2 mile upstream of its confluence with Town Creek to points 5 miles upstream.
4	III		Intrastate tributaries to the Dan River above the Virginia-North Carolina state line just east of Draper, North Carolina, to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	vi		Browns Dan River from the intersection of Routes 647 and 646 to its headwaters.
	vi		Little Spencer Creek from its confluence with Spencer Creek to its headwaters.
	vi		Poorhouse Creek from its confluence with North Fork South Mayo River upstream to Route 817.
***			Rock Castle Creek from its confluence with the Smith River upstream to Route 40.
VI			Natural Trout Waters in Section 4
	ii		Barnard Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Big Cherry Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		Camp Branch from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Haunted Branch from its confluence with Barnard Creek upstream including all named and unnamed tributaries.
	ii		Hookers Creek from its confluence with the Little Dan River upstream including all named and unnamed tributaries.
	iii		Ivy Creek from Coleman's Mill Pond upstream to Route 58 (approximately 2.5 miles).
	iii		Little Ivy Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Little Rock Castle Creek from its confluence with Rock Castle Creek upstream including all named and unnamed tributaries.
	ii		Maple Swamp Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	iii		Mayberry Creek from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		North Fork South Mayo River from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	vi**		Patrick Springs Branch from its confluence with Laurel Branch upstream including all named and unnamed tributaries.

iii			Polebridge Creek from Route 692 upstream including all named and unnamed tributaries.
ii			Poorhouse Creek from Route 817 upstream including all named and unnamed tributaries.
ii			Rhody Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
iii			Rich Creek from Route 58 upstream including all named and unnamed tributaries.
ii			Roaring Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
i			Rock Castle Creek from Route 40 upstream including all named and unnamed tributaries.
iii			Round Meadow Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Sawpit Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
ii			Shooting Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
vi**			Spencer Creek from Route 692 upstream including all named and unnamed tributaries.
iii			Squall Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Tuggle Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Widgeon Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
4a	III	PWS	Intrastate tributaries (includes Beaver Creek, Little Beaver Creek, and Jones Creek, for the City of Martinsville) to the Smith River from DuPont's (inactive) raw water intake to points 5 miles upstream from Fieldcrest Cannon's raw water intake.
4b	III	PWS	Marrowbone Creek and its tributaries from the Henry County Public Service Authority's raw water intake (about 1/4 <u>0.25</u> mile upstream from Route 220) to their headwaters.
4c	III	PWS	Leatherwood Creek and its tributaries from the Henry County Public Service Authority's raw water intake 8 miles upstream of its confluence with the Smith River to points 5 miles upstream.
5	IV	PWS	Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam unless otherwise designated in this chapter.
5a	III	<u>PWS</u>	Tributaries to the Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5a
	vi		Day Creek from Route 741 to its headwaters.
	VI		Natural Trout Waters in Section 5a
iii			Gunstock Creek from its confluence with Overstreet Creek upstream including all named and unnamed tributaries.

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	ii		Overstreet Creek from its confluence with North Otter Creek upstream including all named and unnamed tributaries.
5b	III	PWS	Spring Creek from Keysville's raw water intake upstream to its headwaters.
5c	III	PWS	Falling River and its tributaries from a point just upstream from State Route 40 (the raw water source for Dan River, Inc.) to points 5 miles upstream and including the entire Phelps Creek watershed which contains the Brookneal Reservoir.
5d	III		Falling River and its tributaries from 5 miles above Dan River, Inc. raw water intake to its headwaters.
5e	III	PWS	Reed Creek and its tributaries from Altavista's raw water intake upstream to their headwaters.
5f	III	PWS	Big Otter River and its tributaries from Bedford's raw water intake to points 5 miles upstream, and Stony Creek and Little Stony Creek upstream to their headwaters.
	VI	PWS	Natural Trout Waters in Section 5f
	ii		Little Stony Creek from 1 mile above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Stony Creek from the Bedford Reservoir upstream including all named and unnamed tributaries.
5g	III		Big Otter River and its tributaries from 5 miles above Bedford's raw water intake upstream to their headwaters.
5h	III		Ash Camp Creek and that portion of Little Roanoke Creek from its confluence with Ash Camp Creek to the Route 47 bridge.
5i	III	PWS	The Roanoke River and its tributaries from the Town of Altavista's raw water intake, 0.1 mile upstream from the confluence of Sycamore Creek, to points 5 miles upstream.
5j	III	PWS	Big Otter River and its tributaries from the Campbell County Utilities and Service Authority's raw water intake to points 5 miles upstream.
6	IV	pH-6.5-9.5	Roanoke River from a point (at latitude 37°15'53"; longitude 79°54'00") 5 miles above the headwaters of Smith Mountain Lake upstream to Salem's #1 raw water intake.
	V		Stockable Trout Waters in Section 6
	***	pH-6.5-9.5, <u>ff</u>	Roanoke River from its junction from Routes 11 and 419 to Salem's #1 raw water intake.
6a	III	NEW-1	Tributaries of the Roanoke River from Leesville Dam to Niagra Reservoir, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6a
	vi		Gourd Creek from 1.3 miles above its confluence with Snow Creek to its headwaters.
	vi		Maggodee Creek from Boones Mill upstream to Route 862 (approximately 3.8 miles).
	vii		South Fork Blackwater River from its confluence with the Blackwater River upstream to Roaring Run.
	vi		South Prong Pigg River from its confluence with the Pigg River to its headwaters.
	VI		Natural Trout Waters in Section 6a

	iii		Daniels Branch from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
	ii		Green Creek from Roaring Run upstream including all named and unnamed tributaries.
	ii		Pigg River from 1 mile above the confluence of the South Prong Pigg River upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
6b			(Deleted)
6c	III	PWS	Falling Creek Reservoir and Beaverdam Reservoir.
6d	IV		Tributaries of the Roanoke River from Niagra Reservoir to Salem's #1 raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6d
	vii	<u>ee</u>	Tinker Creek from its confluence with the Roanoke River north to Routes 11 and 220.
	VI		Natural Trout Waters in Section 6d
	iii		Glade Creek from its junction with Berkley Road NE to the confluence of Coyner Branch.
6e	IV	PWS	Carvin Cove Reservoir and its tributaries to their headwaters.
6f	IV	PWS, NEW-1	Blackwater River and its tributaries from the Town of Rocky Mount's raw water intake (just upstream of State Route 220) to points 5 miles upstream.
6g	IV	PWS	Tinker Creek and its tributaries from the City of Roanoke's raw water intake (about 0.4 mile downstream from Glebe Mills) to points 5 miles upstream.
6h	IV	PWS	Roanoke River from Leesville Dam to Smith Mountain Dam (Gap of Smith Mountain), excluding all tributaries to Leesville Lake.
6i	IV	PWS, <u>NEW-1</u>	Roanoke River from Smith Mountain Dam (Gap of Smith Mountain) upstream to a point (at latitude 37°15'53"; longitude 79°54'00" and its tributaries to points 5 miles above the 795.0 foot contour (normal pool elevation) of Smith Mountain Lake.
7	IV	pH-6.5-9.5, ESW-2	Roanoke River and its tributaries, unless otherwise designated in this chapter, from Salem's #1 raw water intake to their headwaters.
	V		Stockable Trout Waters in Section 7
	vi	pH-6.5-9.5	Elliott Creek from the confluence of Rocky Branch to its headwaters.
	vi	pH-6.5-9.5	Goose Creek from its confluence with the South Fork Roanoke River to its headwaters.
	vi	pH-6.5-9.5	Mill Creek from its confluence with Bottom Creek to its headwaters.
	***	pH-6.5-9.5	Roanoke River from 5 miles above Salem's #2 raw water intake to the Spring Hollow Reservoir intake (see section <u>Section</u> 7b).
	vi	pH-6.5-9.5	Smith Creek from its confluence with Elliott Creek to its headwaters.
	vi	pH-6.5-9.5	South Fork Roanoke River from 5 miles above the Spring Hollow Reservoir intake (see section <u>Section</u> 7b) to the mouth of Bottom Creek (river mile 17.1).
	VI		Natural Trout Waters in Section 7

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	ii	pH-6.5-9.5	Big Laurel Creek from its confluence with Bottom Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Bottom Creek from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lick Fork (Floyd County) from its confluence with Goose Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Mill Creek from its confluence with the North Fork Roanoke River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Purgatory Creek from Camp Alta Mons upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Spring Branch from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
7a	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from Salem's #1 raw water intake to points 5 miles upstream from Salem's #2 raw water intake.
	V	PWS	Stockable Trout Waters in Section 7a
	***	pH-6.5-9.5, <u>ff</u>	Roanoke River from Salem's #1 raw water intake to a point 5 miles upstream from Salem's #2 raw water intake.
7b	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from the Spring Hollow Reservoir intake upstream to points 5 miles upstream.
	V	PWS	Stockable Trout Waters in Section 7b
	***	pH-6.5-9.5, hh <u>ff</u>	Roanoke River from the Spring Hollow Reservoir intake to the <u>Floyd</u> -Montgomery County line.
	vi	pH-6.5-9.5	South Fork Roanoke River from its confluence with the Roanoke River to 5 miles above the Spring Hollow Reservoir intake.

9VAC25-260-460. Yadkin River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	PWS	Yadkin River Basin in Virginia including Ararat River, Johnson Creek, Little Fisher River, Lovills Creek, Pauls Creek and Stewarts Creek - the entire reach of these streams from the Virginia-North Carolina state line to their headwaters.
	V	PWS	Stockable Trout Waters in Section 1
	***		Ararat River from Route 823 upstream to Route 671.
	vi		Halls Branch from its confluence with Lovills Creek 4.5 miles upstream.
	vi		Johnson Creek from the Virginia-North Carolina state line to its headwaters.
	vii		Lovills Creek from the Virginia-North Carolina state line 1.8 miles upstream (to the Natural Resource Conservation Service dam).
	vii		Pauls Creek (at the Carroll County line at Route 690) from 6.7 miles above its confluence with Stewarts Creek 4.2 miles upstream.
	VI	PWS	Natural Trout Waters in Section 1
	iii		Ararat River from Route 671 upstream including all named and unnamed tributaries.
	iii		East Fork Johnson Creek from its confluence with Johnson Creek upstream including all named and unnamed tributaries.

- iii Elk Spur Branch from its confluence with Lovills Creek upstream including all named and unnamed tributaries.
- i Little Fisher Creek from the Virginia-North Carolina state line upstream including all named and unnamed tributaries.
- ii Little Pauls Creek in the vicinity of Route 692 (4 miles above its confluence with Pauls Creek) upstream including all named and unnamed tributaries.
- iii Lovills Creek and its tributaries from the headwaters of the impoundment formed by the Natural Resource Conservation Service dam (1.8 miles above the Virginia-North Carolina state line) to river mile 7.8 (at the confluence of Elk Spur and Waterfall Branch) their headwaters.
- ii North Fork Stewarts Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
- ii Pauls Creek (Carroll County) from 10.9 miles above its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
- i South Fork Stewarts Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
- iii Stewarts Creek below Lambsburg in the vicinity of Route 696 (10.4 miles above its confluence with the Ararat River) to the confluence of the North and South Forks of Stewarts Creek.
- iii Sun Run from its confluence with the Ararat River upstream including all named and unnamed tributaries.
- iii Thompson Creek from its confluence with the Ararat River upstream including all named and unnamed tributaries.
- ii Turkey Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
- ii Waterfall Branch from its confluence with Lovills Creek upstream including all named and unnamed tributaries.

9VAC25-260-470. Chowan and Dismal Swamp (Chowan River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	NEW-21	Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately State Route 611 at river mile 20.90; Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674.
2	VII	NEW-21	Blackwater River from the end of tidal waters to its headwaters and its free-flowing <u>free flowing</u> tributaries in Virginia, unless otherwise designated in this chapter.
2a	VII	PWS	Blackwater River and its tributaries from Norfolk's auxiliary raw water intake near Burdette, Virginia, to points 5 miles above the raw water intake, to include Corrowaugh Swamp to a point 5 miles above the raw water intake.
2b	III		Nottoway River from the end of tidal waters to its headwaters and its free-flowing <u>free flowing</u> tributaries in Virginia, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2b Assamoosick Swamp and its tributaries from river mile 2.50 to its headwaters. Black Branch Swamp from its confluence with the Nottoway River to its headwaters.

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			Butterwood Creek from river mile 4.65 (near Route 622) upstream to river mile 14.59 (near Route 643).
			Cabin Point Swamp from its confluence with the Nottoway River to its headwaters.
			Cooks Branch from its confluence with Butterwood Creek to river mile 1.08
			Gosee Swamp and its tributaries from its confluence with the Nottoway River to river mile 6.88.
			Gravelly Run and its tributaries from its confluence with Rowanty Creek to river mile 8.56.
			Harris Swamp and its tributaries from its confluence with the Nottoway River to river mile 8.72.
			Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27 excluding Picture Branch.
			Hunting Quarter Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.
			Moores and Jones Holes Swamp and tributaries from their confluence with the Nottoway River to its headwaters.
			Nebletts Mill Run and its tributaries from its confluence with the Nottoway River to its headwaters.
			Raccoon Creek and its tributaries from its confluence with the Nottoway River to its headwaters.
			Rowanty Creek and its tributaries from its confluence with the Nottoway River to Gravelly Run.
			Southwest Swamp and its tributaries from its confluence with Stony Creek to river mile 8.55.
			Three Creek and its tributaries from its confluence with the Nottoway River upstream to its headwaters <u>at</u> Slagles Lake.
2c	III	PWS	Nottoway River and its tributaries from Norfolk's auxiliary raw water intake near Courtland, Virginia, to points 5 miles upstream unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2c
			Assamoosick Swamp <u>and its tributaries</u> from its confluence with the Nottoway River to river mile 2.50.
2d			(Deleted)
2e	III	PWS	Nottoway River and its tributaries from the Georgia-Pacific and the Town of Jarratt's raw water intakes near Jarratt, Virginia, to points 5 miles above the intakes.
2f	III	PWS	Nottoway River and its tributaries from the Town of Blackstone's raw water intake to points 5 miles above the raw water intake <u>upstream</u> .
2g	III	PWS	Lazaretto Creek and its tributaries from Crewe's raw water intake to points 5 miles upstream.
2h	III	PWS	Modest Creek and its tributaries from Victoria's raw water intake to their headwaters.
2i	III	PWS	Nottoway River and its tributaries from the Town of Victoria's raw water intake at the Falls (about 200 feet upstream from State Route 49) to points 5 miles upstream.
2j	III	PWS	Big Hounds Creek from the Town of Victoria's auxiliary raw water intake (on Lunenburg Lake) to its headwaters.

3	III		Meherrin River and its tributaries in Virginia from the Virginia-North Carolina state line to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3 <u>Cattail Creek and its tributaries from its confluence with Fontaine Creek to their headwaters.</u> Tarrara Creek and its tributaries from its confluence with the Meherrin River to its headwaters. Fountains <u>Fontaine</u> Creek and its tributaries from its confluence with the Meherrin River to Route 301.
3a	III	PWS	Meherrin River and its tributaries from Emporia's water supply dam to points 5 miles upstream.
3b	III	PWS	Great Creek from Lawrenceville's raw water intake to a point 7.6 miles upstream.
3c	III	PWS	Meherrin River and its tributaries from Lawrenceville's raw water intake to points 5 miles upstream.
3d	III	PWS	Flat Rock Creek from Kenbridge's raw water intake upstream to its headwaters.
3e	III	PWS	Meherrin River and its tributaries from South Hill's raw water intake to points 5 miles upstream.
3f	III		Couches Creek from a point 1.6 miles downstream from the Industrial Development Authority discharge to its headwaters.
4	III		Free flowing tributaries to the Chowan River in Virginia unless otherwise designated in this section.
	VII		Swamp waters in Section 4 Unnamed tributary to Buckhorn Creek from its headwaters to the Virginia-North Carolina state line. Somerton Creek and its tributaries from the Virginia-North Carolina state line at river mile 0.00 upstream to river mile 13.78.

9VAC25-260-510. Tennessee and Big Sandy River Basins (Holston River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		North Fork Holston River and its tributaries, unless otherwise designated in this chapter, from the Virginia-Tennessee state line to their headwaters, and those sections of Timbertree Branch and Boozy Creek in Virginia.
	V		Stockable Trout Waters in Section 1
	vi		Greendale Creek from its confluence with the North Fork Holston River 4.1 miles upstream.
	v		Laurel Bed Creek from its confluence with Tumbling Creek 1.8 miles upstream.
	vi		Laurel Creek within the Thomas Jefferson National Forest boundaries.
	***		Laurel Creek from Route 16 to its confluence with Roaring Fork.
	vi		Lick Creek (Bland County) from 5.5 miles above its confluence with the North Fork Holston River 10.9 miles upstream.
	vi		Little Tumbling Creek from Tannersville upstream to where the powerline crosses the stream.
	vi		Lynn Camp Creek from its confluence with Lick Creek 3.9 miles upstream.
	vi		Punch and Judy Creek from its confluence with Laurel Creek 3.2 miles upstream.

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- v Tumbling Creek from its confluence with the North Fork Holston River ~~7.1 miles~~ upstream including all named and unnamed tributaries.
- VI Natural Trout Waters in Section 1
- ii Barkcamp Branch from its confluence with Roaring Fork upstream including all named and unnamed tributaries.
- ii Beartown Branch from its confluence with Sprouts Creek upstream including all named and unnamed tributaries.
- ii Beaver Creek (Smyth County) from its confluence with the North Fork Holston River 2.8 miles upstream.
- ~~*** Big Tumbling Creek from its confluence with the North Fork Holston River upstream including all named and unnamed tributaries.~~
- ii Brier Cove from its confluence with Tumbling Creek upstream including all named and unnamed tributaries.
Brumley Creek from its confluence with the North Fork Holston River upstream to the Hidden Valley Lake dam including all named and unnamed tributaries.
- ~~***~~ Brumley Creek from its confluence with the North Fork Holston River (at Duncanville) 4 miles upstream.
- iii Brumley Creek from 4 miles above its confluence with the North Fork Holston River (at Duncanville) 6.9 miles upstream.
- iii Campbell Creek (Smyth County) from its confluence with the North Fork Holston River at Ellendale Ford 1 mile upstream.
- ii Coon Branch from its confluence with Barkcamp upstream including all named and unnamed tributaries.
- ii Cove Branch from its confluence with Roaring Fork upstream including all named and unnamed tributaries.
- ii Henshaw Branch from its confluence with Lick Creek upstream including all named and unnamed tributaries.
- ii Little Sprouts Creek from its confluence with Sprouts Creek upstream including all named and unnamed tributaries.
- ii Little Tumbling Creek from the powerline crossing upstream including all named and unnamed tributaries.
- v** Red Creek from its confluence with Tumbling Creek upstream including all named and unnamed tributaries.
- ii Roaring Fork (Tazewell County) from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
- ii Sprouts Creek from its confluence with the North Fork Holston River upstream including all named and unnamed tributaries.
- ii Toole Creek from its confluence with the North Fork Holston River 5.9 miles upstream.
- 1a IV North Fork Holston River from the Olin Corporation downstream to the Virginia-Tennessee state line.
- 1b IV PWS Big Moccasin Creek and its tributaries from Weber City's raw water intake to points 5 miles upstream from Gate City's raw water intake.
- 1c (Deleted)

1d	IV	PWS	Unnamed tributary to the North Fork Holston River from Hilton's Community No. 2 public water supply raw water intake to its headwaters.
2	IV	PWS	South Holston Lake in Virginia and South Holston Lake and its tributaries from the Bristol Virginia Utilities Board's raw water intake to points 5 miles upstream.
3	IV		Tributaries of the South Holston Lake, and Sinking Creek and Nicely Branch in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3
	vi		Berry Creek from its confluence with Fifteenmile Creek (Washington County) 2 miles upstream.
	vi		Spring Creek from its confluence with the South Holston Lake to its headwaters.
	VI		Natural Trout Waters in Section 3
	ii		Cox Mill Creek from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
3a			(Deleted)
4	IV		Steel Creek and Beaver Creek and their tributaries in Virginia.
	V		Stockable Trout Waters in Section 4
	vi		Beaver Creek (Washington County) and its tributaries from the flood control dam (near Route 11) to their headwaters.
	vi		Sinking Creek (tributary to Paperville Creek-Washington County) from the Virginia-Tennessee state line at Bristol 3.4 miles upstream.
5	IV		Middle Fork Holston River and its tributaries, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5
	vi		Dry Run from its confluence with the Middle Fork Holston River 1.6 miles upstream.
	vi		Dutton Branch from its confluence with the Middle Fork Holston River 2 miles upstream.
	vi		Laurel Springs Creek from its confluence with the Middle Fork Holston River 2 miles upstream.
	vi		Middle Fork Holston River from 5 miles above Marion's raw water intake (river mile 45.83) to the headwaters.
	vi		Preston Hollow from 0.5 mile above its confluence with the Middle Fork Holston River 1.5 miles upstream.
	vi		Staley Creek from its confluence with the Middle Fork Holston River 1 mile upstream.
	VI		Natural Trout Waters in Section 5
	iii		East Fork Nicks Creek from its confluence with Nicks Creek upstream including all named and unnamed tributaries.
	iii		Nicks Creek within the <u>Jefferson</u> National Forest boundary (river mile 1.6) upstream including all named and unnamed tributaries.
	iii		Staley Creek from 1 mile above its confluence with the Middle Fork Holston River upstream including all named and unnamed tributaries.
5a	IV		Middle Fork Holston River and its tributaries from Edmondson Dam upstream to the Route 91 bridge.
5b	IV		Hungry Mother Creek from the dam upstream including all named and unnamed tributaries.

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5c	IV	PWS	Middle Fork Holston River and its tributaries from Marion's raw water intake to points 5 miles upstream, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5c
	vi		Middle Fork Holston River from Marion's raw water intake at Mt. Carmel at river mile 45.83 to a point 5 miles upstream (river mile 50.83).
5d	IV	PWS	Middle Fork Holston River and its tributaries from Washington County Service Authority's raw water intake to points 5 miles upstream.
6	IV	ESW-10	South Fork Holston River and its tributaries in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6
	vi		Grosses Creek from its confluence with the South Fork Holston River 3.4 miles upstream.
	vi		Rush Creek (Washington County) from its confluence with the South Fork Holston River 2.2 miles upstream.
	vi		Straight Branch from its confluence with Whitetop Laurel Creek 2.5 miles upstream.
	VI		Natural Trout Waters in Section 6
	iii		Barkcamp Branch from its confluence with Rowland Creek upstream including all named and unnamed tributaries.
	iii		Beaverdam Creek (Washington County) from its confluence with Laurel Creek to the Virginia-Tennessee state line 2 miles upstream.
	iii		Bell Hollow from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
	iii		Big Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
			Big Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
	iii		Big Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek 2.6 miles upstream.
	ii		Big Laurel Creek (Smyth County) from 2.6 miles above its confluence with Whitetop Laurel Creek (at Laurel Valley Church) upstream including all named and unnamed tributaries.
	iii		Brush Creek from its confluence with Rush Creek upstream including all named and unnamed tributaries.
	iii		Buckeye Branch from its confluence with Green Cove Creek upstream including all named and unnamed tributaries.
	ii		Charlies Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
	iii		Cold Branch from its confluence with Jerrys Creek upstream including all named and unnamed tributaries.
	iv		Comers Creek from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
	ii		Cressy Creek from 1.7 miles above its confluence with the South Fork Holston River at Route 16 upstream including all named and unnamed tributaries.
	ii		Daves Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.

- iii Dickey Creek from 0.6 mile above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
- ii Dry Fork from 1.2 miles above its confluence with St. Clair Creek upstream including all named and unnamed tributaries.
- ii Feathercamp Branch from its confluence with Straight Branch upstream including all named and unnamed tributaries.
- ii Grassy Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
- ii Green Cove Creek from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
- ii Grindstone Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
- iii High Trestle Branch from its confluence with Buckeye Branch upstream including all named and unnamed tributaries.
- iii Hopkins Branch from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
- iii Houndshell Branch from its confluence with Cressy Creek upstream including all named and unnamed tributaries.
- ii Hurricane Creek (Smyth County) from its confluence with Comers Creek upstream including all named and unnamed tributaries.
- iii Hutton Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
- iii Jerrys Creek (Smyth County) from 1.5 miles above its confluence with Rowland Creek upstream including all named and unnamed tributaries.
- ii Little Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
- *** Laurel Creek from its confluence with Beaverdam Creek (Washington County) to the Virginia-North Carolina state line.
- ii London Bridge Branch from its confluence with Beaverdam Creek (Washington County) 0.6 mile upstream.
- iii Long Branch from its confluence with Jerrys Creek upstream including all named and unnamed tributaries.
- ii Mill Creek (Washington County) from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
- iii Parks Creek from its confluence with Cressy Creek upstream including all named and unnamed tributaries.
- ii Pennington Branch from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
- iii Quarter Branch from 1.1 miles above its confluence with Cressy Creek upstream including all named and unnamed tributaries.
- iii Raccoon Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
- ii Rowland Creek from 2.5 miles above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.

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	ii		Rush Creek (Washington County) from 2.2 miles above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
	iii		Scott Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
	iii		Slemp Creek from 2 miles above its confluence with Cressy Creek upstream including all named and unnamed tributaries.
	ii		South Fork Holston River from 101.8 miles above its confluence with the Holston River to the Thomas Bridge Water Corporation's raw water intake (see section <u>Section 6a</u>).
	ii		South Fork Holston River from 5 miles above the Thomas Bridge Water Corporation's raw water intake to a point 12.9 miles upstream (see section <u>Section 6a</u>).
	ii		Star Hill Branch from its confluence with Green Cove Creek upstream including all named and unnamed tributaries.
	ii		St. Clair Creek from 3.3 miles above its confluence with the South Fork Holston River (at Route 600) above Horseshoe Bend upstream including all named and unnamed tributaries.
	ii		Sturgill Branch from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
	iii		Valley Creek (Washington County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
			Whitetop Laurel Creek from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
	ii		Whitetop Laurel Creek from its confluence with Laurel Creek 8.1 miles upstream.
	i		Whitetop Laurel Creek from 8.1 miles above its confluence with Laurel Creek 4.4 miles upstream.
	iii		Whitetop Laurel Creek from 12.5 miles above its confluence with Laurel Creek 3.8 miles upstream.
6a	IV	PWS	South Fork Holston River and its tributaries from Thomas Bridge Water Corporation's raw water intake between Route 658 and Route 656 to points 5 miles upstream.
	VI		Natural Trout Waters in Section 6a
	ii		South Fork Holston River from Thomas Bridge Water Corporation's raw water intake to a point 5 miles upstream.

9VAC25-260-520. Chesapeake Bay, Atlantic Ocean and small coastal basins.

SEC.	CLASS	SP.	STDS.	SECTION DESCRIPTION
1	I		a	The Atlantic Ocean from Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West) east to the three mile limit and south to the <u>Virginia</u> -North Carolina state line. The Atlantic Ocean from Cape Henry Light to Thimble Shoal Channel (Latitude 36°57'30" North; Longitude 76°02'30" West) from Thimble Shoal Channel to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West) and north to the Virginia-Maryland state line.
1a	III			All free flowing portions of the streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.
1b	II		a	Tidal portions of streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.
2	II		a	Chesapeake Bay and its tidal tributaries from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) to and along the south side of Thimble Shoal Channel to its

eastern end (Latitude 36°57'03" North; Longitude 76°02'03" West) to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West) north to the Virginia-Maryland ~~border~~ state line following the east-west divide boundary on the Eastern Shore of Virginia, west along the Virginia-Maryland ~~border~~ state line, to the Virginia Coast, (Latitude 37°53'23" North; Longitude 76°14'25" West) and south following the Virginia Coast to Old Point Comfort Tower (previously described), unless otherwise designated in this chapter.

- 2a III Free flowing portions of streams lying on the Eastern Shore of Virginia west of the east-west divide boundary unless otherwise designated in this chapter.
- 2b III Drummonds Millpond including Coards Branch.
- 2c III The Virginia Department of Agriculture experimental station pond and its tributaries.
- 2d III The free flowing streams tributary to the western portion of the Chesapeake Bay lying between the Virginia-Maryland state line and Old Point Comfort.

- VII Swamp waters in Section 2d
Briery Swamp and tributaries from the confluence with Dragon Swamp to their headwaters.
Contrary Swamp from the confluence with Dragon Swamp to its headwaters.
Crary Creek from its confluence with Fox Mill Run to its headwaters.
Dragon Run and its tributaries from the confluence with Dragon Swamp to their headwaters.
Dragon Swamp and tributaries from the head of tidal waters at river mile 4.60 to their headwaters.
Exol Swamp and tributaries from the confluence with Dragon Swamp to their headwaters.
Fox Mill Run from the head of tidal waters to its headwaters.
Holmes Swamp and its tributaries from the confluence with Exol Swamp to their headwaters.
Northwest Branch Severn River from the head of tidal waters near Severn Hall Lane to its headwaters.
Timber Branch Swamp and its tributaries from the confluence with Dragon Swamp to their headwaters.
Yorkers Swamp and its tributaries from the confluence with Dragon Swamp to their headwaters.
White Marsh and its tributaries [~~form~~ from] the confluence with Dragon Swamp to their headwaters.
- 2e III PWS Harwood's Mill Reservoir (in Poquoson River's headwaters - a source of water for the City of Newport News) and its tributaries.
- 2f III PWS Brick Kiln Creek and its tributaries from Fort Monroe's raw water intake (at the Big Bethel Reservoir) to points 5 miles upstream.
- 2g III PWS Beaverdam Swamp and its tributaries (including Beaverdam Swamp Reservoir) from the Gloucester County Water System raw water intake to its headwaters.
- 3 II a Chesapeake Bay from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) along the south side of Thimble Shoal Channel to Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West).
- 3a II a,z Little Creek from its confluence with Chesapeake Bay (Lynnhaven Roads) to end of navigable waters.
- 3b II a Tidal portions of Lynnhaven watershed from its confluence with the Chesapeake Bay (Lynnhaven Roads) to and including Lynnhaven Bay, Western Branch Lynnhaven River, Eastern Branch Lynnhaven River, Long Creek, Broad Bay and Linkhorn Bay, Thalia Creek and its tributaries to the end of tidal waters. Great Neck Creek and Little Neck Creek from their confluence with Linkhorn Bay and their tidal tributaries. Rainey Gut and Crystal Lake from their confluence with Linkhorn Bay.

Regulations

3c	III		Free flowing portions of streams in Section 3b, unless otherwise designated in this chapter.
3d	III	PWS	The impoundments on the Little Creek watershed including Little Creek Reservoir, Lake Smith, Lake Whitehurst, Lake Lawson, and Lake Wright.
3e	II		London Bridge Creek from its confluence with the Eastern Branch of Lynnhaven River to the end of tidal waters. Wolfsnare Creek from its confluence with the Eastern Branch Lynnhaven River to the fall line.
3f	III		Free flowing portions of London Bridge Creek and Wolfsnare Creek to the Dam Neck Road Bridge at N36°47'20.00"/W76°04'12.10" (West Neck Creek) and their free flowing tributaries.
3g	III		Lake Joyce and Lake Bradford.

9VAC25-260-530. York River Basin.

SEC.	CLASS	SP. STDS	SECTION DESCRIPTION
1	II	a,aa	York River and the tidal portions of its tributaries from Goodwin Neck and Sandy Point upstream to Thorofare Creek and Little Salem Creek near West Point; Mattaponi River and the tidal portions of its tributaries from Little Salem Creek to the end of tidal waters; Pamunkey River and the tidal portions of its tributaries from Thorofare Creek near West Point to the end of tidal waters.
2	III		Free flowing tributaries of the York River, free flowing tributaries of the Mattaponi River to Clifton and the Pamunkey River to Romancoke, unless otherwise designated in this chapter.
2a	III	PWS	Waller Mill Reservoir and its drainage area above Waller Mill dam which serves as a raw water supply for the City of Williamsburg.
2b	III	PWS	Jones Pond (a tributary of Queen Creek near Williamsburg which serves as the raw water supply for Cheatham Annex Naval Station) and its tributaries to points 5 miles upstream.
3	III		Free flowing portions of the Mattaponi and Pamunkey Rivers, free flowing tributaries of the Mattaponi above Clifton, and free flowing tributaries of the Pamunkey above Romancoke, unless otherwise designated in this chapter.
	VII		Swamp Waters <u>waters</u> in Section 3, <u>Garnetts Creek and tributaries from the head of tidal waters upstream to include Dickey's Swamp and its tributaries.</u> Herring Creek from its headwaters at river mile 17.2 downstream to the confluence with the Mattaponi River and three named tributaries: Dorrell Creek, Fork Bridge Creek and Millpond Creek from their headwaters to their confluence with Herring Creek. <u>Hornquarter Creek from its confluence with the Pamunkey River to its headwaters.</u> <u>Jacks Creek and tributaries from the head of tidal waters to their headwaters.</u> Matadequin Creek and its tributaries, from below an unnamed tributary to Matadequin Creek at river mile 9.93 (between Rt. <u>Route</u> 350 and Sandy Valley Creek) downstream to its confluence with the Pamunkey River. Mattaponi River from its confluence with Maracossic Creek at river mile 57.17 to the head of tidal waters. Mechumps Creek from the confluence with Slayden Creek to the Pamunkey River, Slayden Creek and its tributaries to their headwaters, and Campbell Creek from the unnamed tributary at river mile 3.86 downstream to the confluence with Mechumps Creek.

~~[Mehixen Creek and its tributaries from its confluence with the Pamunkey River to their headwaters.]~~

Monquin (Moncuin) Creek and its tributaries from the head of tidal waters to their headwaters.

Reedy Creek from its headwaters to its confluence with Reedy Millpond at river mile 1.06.

Totopotomoy Creek from its confluence with the Pamunkey River to its headwaters.

3a	III	PWS	South Anna River and its tributaries from Ashland's raw water intake to a point 5 miles upstream.
3b	III	PWS	Northeast Creek and its tributaries from the Louisa County Water Authority's impoundment dam (approximately 4/8 <u>0.125</u> mile upstream of Route 33) to their headwaters.
3c	III		South Anna River from Route 15 upstream to a point 1.5 miles below the effluent from the Gordonsville Sewage Treatment Plant.
3d	III	PWS	Ni River and its tributaries from Spotsylvania's raw water intake near Route 627 to their headwaters.
3e	III	PWS	The North Anna River and its tributaries from Hanover County's raw water intake near Doswell (approximately 4/2 <u>0.5</u> mile upstream from State Route 30) to points 5 miles upstream.
3f	III	PWS	Stevens Mill Run from the Lake Caroline water impoundment, and other tributaries into the impoundment upstream to their headwaters.

9VAC25-260-540. New River Basin.

SEC.	CLASS	SP. STDS	SECTION DESCRIPTION
1	IV	u	New River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line to the Montgomery-Giles County line.
	V		Stockable Trout Waters in Section 1
	***		Laurel Creek (a tributary to Wolf Creek in Bland County) from Rocky Gap to the Route 613 bridge one mile west of the junction of Routes 613 and 21.
	viii		Laurel Creek (Bland County) from its confluence with Hunting Camp Creek 3.2 miles upstream.
	viii		Little Wolf Creek (Bland County) from its confluence with Laurel Creek 2.6 miles upstream.
	v		Sinking Creek from 5.1 miles above its confluence with the New River 10.8 miles upstream (near the Route 778 crossing).
	vi		Sinking Creek from the Route 778 crossing to the Route 628 crossing.
	vi		Spur Branch from its confluence with Little Walker Creek to its headwaters.
	v		Walker Creek from the Route 52 bridge to its headwaters.
	***		Wolf Creek (Bland County) from Grapefield to its headwaters.
	VI		Natural Trout Waters in Section 1
	ii		Bear Spring Branch from its confluence with the New River upstream including all named and unnamed tributaries.
	iii		Clear Fork (Bland County) from river mile 8.5 upstream including all named and unnamed tributaries.

Regulations

- ii Cove Creek (Tazewell County) from its confluence with Clear Fork upstream including all named and unnamed tributaries.
- ii Cox Branch from its confluence with Clear Fork to Tazewell's raw water intake (river mile 1.6).
- iii Ding Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.
- ii Dry Fork (Bland County) from 4.8 miles above its confluence with Laurel Creek upstream including all named and unnamed tributaries.
- ii East Fork Cove Creek (Tazewell County) from its confluence with Cove Creek upstream including all named and unnamed tributaries.
- Hunting Camp Creek from its confluence with Wolf Creek upstream including all named and unnamed tributaries.
- *** Hunting Camp Creek from its confluence with Wolf Creek 8.9 miles upstream.
- iii Hunting Camp Creek from 8.9 miles above its confluence with Wolf Creek 3 miles upstream.
- ii Laurel Creek (tributary to Wolf Creek in Bland County) from Camp Laurel in the vicinity of Laurel Fork Church, upstream including all named and unnamed tributaries.
- ii Laurel Creek from a point 0.7 mile from its confluence with Sinking Creek upstream including all named and unnamed tributaries.
- ii Little Creek (Tazewell County) from 1.5 miles above its confluence with Wolf Creek above the Tazewell County Sportsmen's Club Lake upstream including all named and unnamed tributaries.
- ii Mercy Branch from its confluence with Mill Creek upstream including all named and unnamed tributaries.
- ii Mill Creek from the Narrows Town line upstream including all named and unnamed tributaries.
- ii Mudley Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
- Nobusiness Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
- *** ~~(Nobusiness Creek from its confluence with Kimberling Creek 4.7 miles upstream.)~~
- iii ~~(Nobusiness Creek from 4.7 miles above its confluence with Kimberling Creek upstream including all named and unnamed tributaries.)~~
- ii Oneida Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
- iii Panther Den Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.
- ii Piney Creek from its confluence with the New River upstream including all named and unnamed tributaries.
- ii Wabash Creek from its confluence with Walker Creek upstream including all named and unnamed tributaries.
- ii West Fork Cove Creek from its confluence with Cove Creek upstream including all named and unnamed tributaries.

1a (Deleted)

1b	IV	u	Wolf Creek and its tributaries in Virginia from its confluence with Mill Creek upstream to the Giles-Bland County line.
1c			(Deleted)
1d	IV	u	Stony Creek and its tributaries, unless otherwise designated in this chapter, from its confluence with the New River upstream to its headwaters, and Little Stony Creek and its tributaries from its confluence with the New River to its headwaters.
	V		Stockable Trout Waters in Section 1d
	vi		Stony Creek (Giles County) from its confluence with the New River to its confluence with Laurel Branch.
	VI		Natural Trout Waters in Section 1d
	iii		Dismal Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Dixon Branch from its confluence with North Fork Stony Creek upstream including all named and unnamed tributaries.
	ii		Hemlock Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Creek from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with the New River upstream including all named and unnamed tributaries.
	ii		Maple Flats Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Meredith Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Nettle Hollow from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		North Fork Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iii		Pine Swamp Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Pond Drain from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Stony Creek (Giles County) from the confluence of Laurel Branch at Olean upstream including all named and unnamed tributaries.
	ii		White Rock Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Wildcat Hollow from its confluence with Stony Creek upstream including all named and unnamed tributaries.
1e	IV	PWS,u	Kimberling Creek and its tributaries from Bland Correctional Farm's raw water intake to points 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 1e

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- iii Dismal Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
- iii Pearis Thompson Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
- iii Standrock Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
- 1f (Deleted)
- 1g IV u Bluestone River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line upstream to their headwaters.
- 1h IV PWS,u Bluestone River and its tributaries from Bluefield's raw water intake upstream to its headwaters.
- VI PWS Natural Trout Waters in Section 1h
- iii Bluestone River from a point adjacent to the Route 650/460 intersection to a point 5.7 miles upstream.
- 1i IV PWS Big Spring Branch from the Town of ~~Poehahontas~~ Pocahontas's intake, from the Virginia-West Virginia state line, including the entire watershed in Abbs Valley (the Town of ~~Poehahontas~~ Pocahontas's intake is located in West Virginia near the intersection of West Virginia State Route 102 and Rye Road.
- 1j (Deleted)
- 1k IV PWS Walker Creek and its tributaries from the Wythe-Bland Water and Sewer Authority's raw water intake (for Bland) to points 5 miles upstream.
- 1l VI ii PWS Cox Branch and its tributaries from Tazewell's raw water intake at the Tazewell Reservoir (river mile 1.6) to headwaters.
- 2 IV v, NEW-5 New River and its tributaries, unless otherwise designated in this chapter, from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line (to include Peach Bottom Creek from its confluence with the New River to the mouth of Little Peach Bottom Creek).
- V Stockable Trout Waters in Section 2
- v Beaverdam Creek from its confluence with the Little River to its headwaters.
- v Big Indian Creek from its confluence with the Little River to a point 7.4 miles upstream.
- vi Boyd Spring Run from its confluence with the New River to its headwaters.
- *** Brush Creek from the first bridge on Route 617 south of the junction of Routes 617 and 601 to the Floyd County line.
- vi Camp Creek from its confluence with the Little River to its headwaters.
- vi Cove Creek (Wythe County) from Route 77, 8.1 miles above its confluence with Reed Creek, 10.5 miles upstream.
- vi Dodd Creek from its confluence with the West Fork Little River to its headwaters.
- *** Dodd Creek from its confluence with the West Fork Little River 4 miles upstream.
- vi Dodd Creek from 4 miles above its confluence with the West Fork Little River to its headwaters.
- vi East Fork Stony Fork from its confluence with Stony Fork 4 miles upstream.

- *** Elk Creek from its confluence with Knob Fork Creek to the junction of State Routes 611 and 662.
- vi Gullion Fork from its confluence with Reed Creek 3.3 miles upstream.
- vi Little Brush Creek from its confluence with Brush Creek 1.9 miles upstream.
- vi Lost Bent Creek from its confluence with the Little River to its headwaters.
- vi Middle Creek from its confluence with Little River to its headwaters.
- vi Middle Fox Creek from its confluence with Fox Creek 4.1 miles upstream.
- vi Mill Creek (Wythe County) from its confluence with the New River 3.7 miles upstream.
- v North Fork Greasy Creek from its confluence with Greasy Creek to its headwaters.
- vi Oldfield Creek from its confluence with the Little River to its headwaters.
- vi Peach Bottom Creek from the mouth of Little Peach Bottom Creek to its headwaters.
- vi Pine Branch from its confluence with the Little River to its headwaters.
- vi Pine Creek (Carroll County) from its confluence with Big Reed Island Creek to its headwaters.
- vi Piney Fork from its confluence with Greasy Creek to its headwaters.
- vi Poor Branch from its confluence with the New River to its headwaters.
- vi Poverty Creek (Montgomery County) from its confluence with Toms Creek to its headwaters.
- vi Reed Creek (Wythe County) within the Jefferson National Forest from 57 miles above its confluence with the New River 6.8 miles upstream, unless otherwise designated in this chapter.
- vi Shady Branch from its confluence with Greasy Creek to its headwaters.
- vi Shorts Creek from 6.2 miles above its confluence with the New River in the vicinity of Route 747, 3 miles upstream.
- vi South Fork Reed Creek from river mile 6.8 (at Route 666 below Groseclose) 11.9 miles upstream.
- vi St. Lukes Fork from its confluence with Cove Creek 1.4 miles upstream.
- vi Stony Fork (Wythe County) from 1.9 miles above its confluence with Reed Creek at the intersection of Routes 600, 682, and 21/52 at Favonia 5.7 miles upstream.
- *** Toms Creek from its confluence with the New River to its headwaters.
- vi West Fork Big Indian Creek from its confluence with Big Indian Creek to its headwaters.
- vi Wolf Branch from its confluence with Poor Branch 1.2 miles upstream.
- VI Natural Trout Waters in Section 2
- ii Baker Branch from its confluence with Cabin Creek upstream including all named and unnamed tributaries.
- ii Baldwin Branch from 0.2 mile above its confluence with Big Horse Creek at the ~~Grayson County—Ashe County~~ Virginia-North Carolina state line upstream including all named and unnamed tributaries.
- ii Bear Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.

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- iii Beaver Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
- iii Beaverdam Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- ii Big Branch from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
- iii Big Horse Creek from 12.8 miles above its confluence with the North Fork New River (above the Virginia-North Carolina state line below Whitetop) upstream including all named and unnamed tributaries.
- ii Big Indian Creek from a point 7.4 miles upstream of its confluence with the Little River upstream including all named and unnamed tributaries.
- ii Big Laurel Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
- iii Big Laurel Creek from its confluence with Pine Creek upstream including all named and unnamed tributaries.
- iii Big Reed Island Creek from Route 221 upstream including all named and unnamed tributaries.
- iii Big Run from its confluence with the Little River upstream including all named and unnamed tributaries.
- Big Wilson Creek from its confluence with the New River upstream including all named and unnamed tributaries.
- *** Big Wilson Creek from its confluence with the New River 8.8 miles upstream.
- ii Big Wilson Creek from 8.8 miles above its confluence with the New River 6.6 miles upstream.
- iii Blue Spring Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
- ii Boothe Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
- ii Bournes Branch from its confluence with Brush Creek upstream including all named and unnamed tributaries.
- iii Brannon Branch from its confluence with Burks Fork upstream including all named and unnamed tributaries.
- ii Brier Run from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
- ii Buffalo Branch from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
- iii Burgess Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
- iii Burks Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
- ii Byars Creek from its confluence with Whitetop Creek upstream including all named and unnamed tributaries.
- Cabin Creek from its confluence with Helton Creek upstream including all named and unnamed tributaries.

- ii Cabin Creek from its confluence with Helton Creek 3.2 miles upstream.
- i Cabin Creek from 3.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.
- ii Cherry Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- ii Chisholm Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
- iv Crigger Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
- *** Cripple Creek from the junction of the stream and U.S. Route 21 in Wythe County upstream including all named and unnamed tributaries.
- iii Crooked Creek (Carroll County) from Route 707 to Route 620.
- ii Crooked Creek from Route 620 upstream including all named and unnamed tributaries.
- iii Daniel Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- iii Dobbins Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
- iv Dry Creek from 1.9 miles above its confluence with Blue Spring Creek upstream including all named and unnamed tributaries.
- iii Dry Run (Wythe County) from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
- iii Earls Branch from its confluence with Beaver Creek upstream including all named and unnamed tributaries.
- iii East Fork Crooked Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- ii East Fork Dry Run from its confluence with Dry Run upstream including all named and unnamed tributaries.
- ii East Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
- ii Elkhorn Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- ii Fox Creek from its junction of ~~the Creek and~~ with Route 734 upstream including all named and unnamed tributaries.
- iii Francis Mill Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
- ii Furnace Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
- *** Glade Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- iii Grassy Creek (Carroll County) from its confluence with Big Reed Island Creek at Route 641, upstream including all named and unnamed tributaries.
- vi** Grassy Creek (Carroll County) from its confluence with Little Reed Island Creek at Route 769, upstream including all named and unnamed tributaries.

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- iii Greasy Creek from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
- iii Greens Creek from its confluence with Stone Mountain Creek upstream including all named and unnamed tributaries.
- iii Guffey Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- ii Helton Creek from the Virginia-North Carolina state line upstream including all named and unnamed tributaries.
- ii Howell Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
- ii Jerry Creek (Grayson County) from its confluence with Middle Fox Creek upstream including all named and unnamed tributaries.
- iii Jones Creek (Wythe County) from its confluence with Kinser Creek upstream including all named and unnamed tributaries.
- ii Killinger Creek from its confluence with Cripple Creek and White Rock Creek upstream including all named and unnamed tributaries.
- iii Kinser Creek from 0.4 mile above its confluence with Crigger Creek above the Mount Rogers National Forest Recreation Area Boundary at Groseclose Chapel upstream including all named and unnamed tributaries.
- iii Laurel Branch (Carroll County) from its confluence with Staunton Branch upstream including all named and unnamed tributaries.
- iii Laurel Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- ii Laurel Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
- iii Laurel Fork (Carroll County) from its confluence with Big Reed Island Creek to the Floyd-Carroll County line.
- i Lewis Fork from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- iii Little Cranberry Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- ii Little Helton Creek from the ~~Grayson County-Ashe County~~ Virginia-North Carolina state line upstream including all named and unnamed tributaries.
- *** Little Reed Island Creek from ~~the its junction of the stream and~~ with State Routes 782 and 772 upstream including all named and unnamed tributaries, unless otherwise designated in this chapter.
- *** Little River from its junction with Route 706 upstream including all named and unnamed tributaries.
- ii Little Snake Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- ii Little Wilson Creek from its confluence with Wilson Creek (at Route 16 at Volney) upstream including all named and unnamed tributaries.
- ii Long Mountain Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.

- iii Meadow Creek (Floyd County) from its confluence with the Little River upstream including all named and unnamed tributaries.
- iii Meadow View Run from its confluence with Burks Fork upstream including all named and unnamed tributaries.
- iii Middle Creek from its confluence with Crigger Creek upstream including all named and unnamed tributaries.
- ii Middle Fork Helton Creek from its confluence with Helton Creek 2.2 miles upstream.
- i Middle Fork Helton Creek from 2.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.
- iii Middle Fox Creek from 4.1 miles above its confluence with Fox Creek upstream including all named and unnamed tributaries.
- iii Mill Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
- ii Mill Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- iii Mira Fork from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
- ii North Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
- iii North Prong Buckhorn Creek from its confluence with Buckhorn Creek upstream including all named and unnamed tributaries.
- ii Oldfield Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
- ii Opossum Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- iii Payne Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
- iii Peak Creek from 19 miles above its confluence with the New River above the Gatewood Reservoir upstream including all named and unnamed tributaries.
- iii Pine Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- iii Pine Creek (Floyd County) from its confluence with Little River upstream including all named and unnamed tributaries.
- iii Pipestem Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- i Quebec Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
- iv Raccoon Branch from its confluence with White Rock Creek upstream including all named and unnamed tributaries.
- *** Reed Creek (Wythe County) from 5 miles above Wytheville's raw water intake upstream including all named and unnamed tributaries.
- ii Ripshin Creek from its confluence with Laurel Creek upstream including all named and unnamed tributaries.

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- iii Road Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- ii ~~Roads~~ Road Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
- iv Rock Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- iii Silverleaf Branch from its confluence with the Little River upstream including all named and unnamed tributaries.
- iii Snake Creek from Route 670 (3.2 miles above its confluence with Big Reed Island Creek) upstream including all named and unnamed tributaries.
- ii Solomon Branch from its confluence with Fox Creek upstream including all named and unnamed tributaries.
- vi** South Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
- iii Spurlock Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
- iii Staunton Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
- iii Stone Mountain Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- iii Straight Branch (Carroll County) from its confluence with Greens Creek upstream including all named and unnamed tributaries.
- ii Sulphur Spring Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
- iii Tory Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
- iii Tract Fork from the confluence of Fortnerfield Branch upstream including all named and unnamed tributaries.
- ii Trout Branch from its confluence with Little Reed Island creek upstream including all named and unnamed tributaries.
- iii Turkey Fork from 2.6 miles above its confluence with Elk Creek upstream including all named and unnamed tributaries.
- ii Venrick Run from its confluence with Reed Creek upstream including all named and unnamed tributaries.
- iii West Fork Comers Rock Branch from its confluence with Comers Rock Branch upstream including all named and unnamed tributaries.
- iii West Fork Dodd Creek from its confluence with Dodd Creek upstream including all named and unnamed tributaries.
- iii West Fork Dry Run from its confluence with Dry Run 2 miles upstream.
- iii West Fork Little Reed Island Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
- *** West Fork Little River from its confluence with Little River upstream including all named and unnamed tributaries.

	iii		West Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
			White Rock Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
	***		White Rock Creek from its confluence with Cripple Creek 1.9 miles upstream.
	iv		White Rock Creek from 1.9 miles above its confluence with Cripple Creek upstream including all named and unnamed tributaries.
	ii		Whitetop Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
	i		Wilburn Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
2a	IV	PWS,v	New River from Radford Army Ammunition Plant's raw water intake (that intake which is the further downstream), upstream to a point 5 miles above the Blacksburg-Christiansburg, V.P.I. NRV [Regional] Water Authority's raw water intake and including tributaries in this area to points 5 miles above the respective raw water intakes.
2b	IV	PWS,v	New River from Radford's raw water intake upstream to Claytor Dam and including tributaries to points 5 miles above the intake.
2c	IV	v, NEW-4	New River and its tributaries, except Peak Creek above Interstate Route 81, from Claytor Dam to Big Reed Island Creek (Claytor Lake).
	V		Stockable Trout Waters in Section 2c
	vi		Chimney Branch from its confluence with Big Macks Creek to its headwaters.
	vi		White Oak Camp Branch from its confluence with Chimney Branch to its headwaters.
	VI		Natural Trout Waters in Section 2c
	ii		Bark Camp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Big Macks Creek from Powhatan Camp upstream including all named and unnamed tributaries.
	iii		Little Macks Creek from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Puncheoncamp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
2d	IV	PWS,v,NEW-5	Peak Creek and its tributaries from Pulaski's raw water intake upstream, including Hogan Branch to its headwaters and Gatewood Reservoir.
	V		Stockable Trout Waters in Section 2d
	***		(West Fork) Peak Creek from the Forest Service Boundary to its headwaters.
2e			(Deleted)
2f	IV	PWS,v	Little Reed Island Creek and its tributaries from Hillsville's upstream raw water intake near Cranberry Creek to points 5 miles above Hillsville's upstream raw water intake, including the entire watershed of the East Fork Little Reed Island Creek.
	VI	PWS	Natural Trout Waters in Section 2f
	iii		East Fork Little Reed Island Creek from its confluence with West Fork Little Reed Island Creek upstream including all named and unnamed tributaries.

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	***		Little Reed Island Creek from Hillsville's upstream raw water intake to a point 5 miles upstream.
		iii	Mine Branch from its confluence with the East Fork Little Reed Island Creek 2 miles upstream.
2g	IV	PWS,v	Reed Creek and its tributaries from Wytheville's raw water intake to points 5 miles upstream.
	VI	PWS,v	Natural Trout Waters in Section 2g
	***		Reed Creek from the western town limits of Wytheville to 5 miles upstream.
2h	IV	PWS,v	Chestnut Creek and its tributaries from Galax's raw water intake upstream to their headwaters or to the Virginia-North Carolina state line.
	VI	PWS	Natural Trout Waters in Section 2h
	***		Coal Creek from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
		ii	East Fork Chestnut Creek (Grayson County) from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
		iii	Hanks Branch from its confluence with the East Fork Chestnut Creek upstream including all named and unnamed tributaries.
		iii	Linard Creek from its confluence with Hanks Branch upstream including all named and unnamed tributaries.
2i	IV		Fries Reservoir section of the New River <u>from river mile 141.36 to river mile 144.29.</u>
2j	IV	PWS	Eagle Bottom Creek from Fries' Fries's raw water intake upstream to its headwaters.
2k	IV		Stuart Reservoir section of the New River <u>New River from Stuart Dam at N36°36'08"/W81°18'40" upstream 2.29 miles.</u>
2l	IV	PWS	New River and its tributaries inclusive of the Wythe County Water Department's Austinville intake near the Route 636 bridge, and the Wythe County Water Department's Ivanhoe intake on Powder Mill Branch just upstream of the Wythe-Carroll County line to points 5 miles above the intakes.
	V	PWS	Stockable Trout Waters in Section 2l
	vi		Powder Mill Branch (from 0.6 mile above its confluence with the New River) 2.1 miles upstream.
2m	IV	PWS, NEW-4,5	New River (Claytor Lake) from the Klopman Mills raw water intake to the Pulaski County Public Service Authority's raw water intake and tributaries to points 5 miles upstream of each intake.
2n			(Deleted)

VA.R. Doc. No. R13-3788; Filed August 1, 2016, 12:32 p.m.



TITLE 12. HEALTH

DEPARTMENT OF HEALTH

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department of Health. 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: **12VAC5-507. Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility.**

Contact Information: Adrienne McFadden, MD, JD, Director, Office of Health Equity, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7425, FAX (804) 864-7440, or email adrienne.mcfadden@vdh.virginia.gov.

FORMS (12VAC5-507)

[Long-Term Care Facility Nursing Scholarship Program Application Checklist and Requirements, LTC-SA-1 \(rev. 5/2016\)](#)

[Virginia Nurse Loan Repayment Program Application, LTC-NLRP-1 \(rev. 5/2016\)](#)

[Virginia Nurse Loan Repayment Program Practice Site Application, LTC-NLRP-2 \(rev. 5/2016\)](#)

VA.R. Doc. No. R16-4825; Filed August 1, 2016, 1:08 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-240).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: September 21, 2016.

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.

Summary:

To comport with Item SSSS of Chapter 780 of the 2016 Acts of Assembly, the amendment allows an individual to use a certified appraisal to assess the current market value of noncommercial property, in lieu of the tax assessed value, for the purpose of determining Medicaid eligibility. The certified appraisal must be completed by a real estate appraiser licensed by the Virginia Real Estate Appraiser Board, and the individual is responsible for the cost.

12VAC30-40-240. More restrictive methods of treating resources than those of the SSI program: § 1902(f) states only.

A. The following limitations apply to resources in addition to the resource requirements of the Supplemental Security Income (SSI) program for the aged, blind and disabled.

1. For income-producing property and other nonresidential property, appropriate equity and profit is to be determined by the prorata share owned by an individual in relation to his proportionate share of the equity and profit.

2. Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceeds the applicable resource limit unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if a partition would not result in the ~~applicant/recipient~~ applicant or recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset.

B. Real property.

1. The current market value of real property is determined by ascertaining the tax assessed value of the property and applying to it the local assessment rate. For noncommercial real property only, the current market value may be determined through the use of a certified appraisal in lieu of the tax assessed value. The certified appraisal must be completed by an individual licensed by the Virginia Real Estate Appraiser Board and the cost of the certified appraisal shall be borne by the applicant or recipient or his designee. The equity value is the current market value less the amount due on any recorded liens against the property. "Recorded" means written evidence that can be substantiated, such as deeds of trust, liens, promissory notes, etc.

2. Real property contiguous to an individual's residence which does not meet the home property definitions in subdivision 3 of this subsection, the SSI income-producing

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requirement or the exceptions listed in subdivision 6 of this subsection and which is saleable according to the provisions in 12VAC30-40-290 C₇ shall be counted as an available resource. The equity value of the contiguous property shall be added to the value of all other countable resources.

3. Ownership of a dwelling occupied by the applicant as his home does not affect eligibility. A home shall mean the house and lot used as the principal residence and all contiguous property as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the State Plan for Medical Assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

The lot occupied by the house shall be a measure of land as designated on a plat or survey or whatever the locality sets as a minimum size for a building lot, whichever is less. In localities where no minimum building lot requirement exists, a lot shall be a measure of land designated on a plat or survey or one acre, whichever is less.

Contiguous property essential to the operation of the home means:

a. Land used for the regular production of any food or goods for the household's consumption only, including:

(1) Vegetable gardens;

(2) Pasture land which supports livestock raised for milk or meat, and land used to raise chickens, pigs, etc. (the amount of land necessary to support such animals is established by the local extension service; however, in no case shall more land be allowed than that actually being used to support the livestock);

(3) Outbuildings used to process ~~and/or~~ or store any of the above;

b. Driveways which connect the homesite to public roadways;

c. Land necessary to the home site to meet local zoning requirements (e.g. building sites, mobile home sites, road frontage, distance from road, etc.);

d. Land necessary for compliance with state or local health requirements (e.g., distance between home and septic tank, distance between septic tanks, etc.);

e. Water supply for the household;

f. Existing burial plots;

g. Outbuilding used in connection with the dwelling, such as garages or tool sheds.

All of the above facts must be fully reevaluated and documented in the case record before the home site determination is made.

4. An institutionalized individual's former residence is counted as an available resource if the recipient is institutionalized longer than six months after the date he was admitted. The former residence is disregarded if it is occupied by the recipient's:

a. Spouse;

b. Minor dependent child under age 18 years;

c. Dependent child under age 19 years if still in school or vocational training;

d. Adult child who is disabled according to the Medicaid or civil service disability definition, ~~and~~ who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs; or

e. Parent who is age 65 years or older and who is disabled according to the Medicaid or civil service disability definition ~~and~~, who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs.

5. An applicant or recipient's proportional share of the value of property owned jointly with another person to whom the applicant or recipient is not married as tenants in common or joint tenants with the right of survivorship at common law is counted as a resource unless it is exempt property or is unsaleable.

6. Ownership of other real property generally precludes eligibility. Exceptions to this provision are: (i) when the equity value of the property, plus all other resources, does not exceed the appropriate resource limitation; (ii) the property is smaller than the county or city zoning ordinances allow for home sites or building purposes, or the property has less than the amount of road frontage required by the county or city for building purposes and adjoining land owners will not buy the property; or (iii) the property has no access, or the only access is through the exempted home site; or (iv) the property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such property, plus all other resources, below applicable resource limitations; or (v) the property cannot be sold after a reasonable effort to sell it has been made, as defined in 12VAC30-40-290.

C. Personal property.

1. Prepaid burial plans are counted as a resource since the money is refundable to the individual upon his request. Cemetery plots are not counted as resources. See 12VAC30-40-290.

2. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, securities and deeds of trusts are considered resources.

VA.R. Doc. No. R16-4728; Filed July 22, 2016, 9:16 a.m.

Final Regulation

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

Title of Regulation: 12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-500).

Statutory Authority: § 32.1-351 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: September 21, 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.

Summary:

Pursuant to Item 305 G of Chapter 780 of the 2016 Acts of Assembly, the amendment adds coverage of behavioral therapy services, including applied behavior analysis, to the Family Access to Medical Insurance Security Plan (FAMIS) for recipients younger than 21 years of age.

12VAC30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, behavioral therapy services including but not limited to applied behavior analysis, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization is required after 26 visits for outpatient mental health visits in the first year of service and prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. Prior authorization for dental services will be based on the Title XIX prior authorization requirements for dental services.

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages six through 18 years. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process

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shall be applied consistent with the process set forth in 12VAC30-50-210 A 7.

VA.R. Doc. No. R16-4682; Filed July 29, 2016, 11:59 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

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

Title of Regulation: 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-10, 18VAC30-21-140; adding 18VAC30-21-145).

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

Effective Date: September 21, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4630, FAX (804) 527-4471, or email audbd@dhp.virginia.gov.

Summary:

The regulations for cerumen management by audiologists and the practice of assistant speech-language pathologists (18VAC30-20) were amended effective July 27, 2016 (see 32:22 VA.R. 2967 June 27, 2016, and 32:22 VA.R. 2968 June 27, 2016). A separate regulatory action effective August 10, 2016, repealed 18VAC30-20 and replaced it with 18VAC30-21. This action incorporates the amendments effective July 27, 2016, into 18VAC30-21.

Part I
General Provisions

18VAC30-21-10. Definitions.

A. The words and terms "audiologist," "board," "practice of audiology," "practice of speech-language pathology," "speech-language disorders," and "speech-language pathologist" when used in this chapter shall have the meanings ascribed to them in § 54.1-2600 of the Code of Virginia.

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 a minimum of 160 hours of professional practice as an audiologist or speech-language pathologist for each 12-month period immediately preceding application for licensure. Active practice may include supervisory, administrative, educational, research, or consultative activities or responsibilities for the delivery of such services.

"ASHA" means the American Speech-Language-Hearing Association.

"Client" means a patient or person receiving services in audiology or speech-language pathology.

"Contact hour" means 60 minutes of time spent in continuing learning activities.

"Limited cerumen management" means the identification and removal of cerumen from the cartilaginous outer one-third portion of the external auditory canal in accordance with minimum standards and procedures set forth in this chapter.

"School speech-language pathologist" means a person licensed pursuant to § 54.1-2603 of the Code of Virginia to provide speech-language pathology services solely in public school divisions.

"Supervision" means that the audiologist or speech-language pathologist is responsible for the entire service being rendered or activity being performed, is available for consultation, and is providing regular monitoring and documentation of clinical activities and competencies of the person being supervised.

Part V
Standards of Practice

18VAC30-21-140. **Supervision** **Supervisory responsibilities; supervision of unlicensed assistants.**

~~A. If a licensed audiologist or speech language pathologist has unlicensed assistants, he shall document supervision of them, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of audiology or speech language pathology and which are commensurate with their level of training.~~

~~B. A licensee may delegate to an unlicensed assistant such activities or functions that are nondiscretionary and do not require the exercise of professional judgment for performance.~~

A. Responsibility of a licensee.

1. A licensed audiologist who supervises unlicensed assistants shall document such supervision, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities that do not constitute the practice of audiology and that are commensurate with their level of training.

2. A licensed speech-language pathologist who supervises unlicensed assistants shall document such supervision, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities that do not constitute the practice of speech-language pathology and that are commensurate with their level of training.

a. A speech-language pathologist shall not supervise an assistant without the speech-language pathologist's knowledge and consent by the assistant and the licensee documented prior to assumption of supervisory responsibilities.

b. The frequency in which the speech-language pathologist personally delivers treatment or services to a client who is receiving some services from an assistant shall be up to the professional judgment of the speech-language pathologist and shall be determined by the treatment needs of the client, the type of services being provided, and the setting in which the client is being served, but shall occur at least every 30 days.

~~3.~~ 3. The identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

B. Qualifications of a speech-language pathologist assistant.

1. A person acting as a speech-language pathologist assistant shall have:

a. A bachelor's degree or associate's degree and documented training by a licensed speech-language pathologist in topics related to the client population to be served; or

b. Employment as a speech-language pathologist assistant in a United States jurisdiction within the last five years preceding July 27, 2016.

2. A speech-language pathologist supervising an assistant shall be responsible for determining that the knowledge, skills, and clinical experience of the assistant are sufficient to ensure competency to perform all tasks to which the assistant is assigned. The speech-language pathologist shall document competency after training and direct observation of the assistant's performance of such tasks, and a record of skills and competencies shall be maintained.

C. Scope of practice of a speech-language pathologist assistant. After demonstration and documentation of competency for the duties to be assigned, an assistant shall only engage in those duties planned, designed, and supervised by a licensed speech-language pathologist, to include the following:

1. Assist with speech, language, and hearing screenings without clinical interpretation of results.

2. Assist during assessment of a client exclusive of administration or interpretation.

3. Perform activities for each session that are routine and do not require professional judgment, in accordance with a plan developed and directed by the speech-language pathologist who retains the professional responsibility for the client.

4. Document a client's performance and report information to the supervising speech-language pathologist.

5. Assist with programming augmentative and alternative communication devices and assist the client in repetitive use of such devices.

6. Sign or initial informal treatment notes and, upon request, co-sign formal documents with the supervising speech-language pathologist.

7. Engage in the following activities:

a. Preparing materials;

b. Scheduling appointments and activities;

c. Preparing charts, records, or graphs and performing other clerical duties;

d. Performing checks and maintenance of equipment; and

e. Assisting a client with transitioning to and from therapy sessions.

8. Perform duties not otherwise restricted to the practice of speech-language pathology.

D. A speech-language pathologist assistant shall not engage in the practice of speech-language pathology, including the following:

1. Represent himself as a speech-language pathologist.

2. Perform standardized or nonstandardized diagnostic tests or formal or informal evaluations.

3. Perform procedures that require a professional level of clinical acumen and technical skill.

4. Tabulate or interpret results and observations of feeding and swallowing evaluations or screenings performed by a speech-language pathologist.

5. Participate in formal conferences or meetings without the presence of the supervising speech-language pathologist.

6. Provide interpretative information to the client, the family of the client, or others regarding the client's status or service.

7. Write, develop, or modify a client's treatment plan.

8. Assist in or provide services as specified in subsection C of this section unless directed by the supervising speech-language pathologist.

9. Sign any formal documents in lieu of the supervising speech-language pathologist.

10. Select a client for service or discharge a client from service.

11. Make a decision on the need for additional services or make referrals for service.

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12. Disclose clinical or confidential information either orally or in writing to anyone other than the supervising speech-language pathologist, unless mandated by law or authorized by the supervising speech-language pathologist.

13. Develop or determine the swallowing or feeding strategies or precautions for a client or provide feeding or swallowing treatment.

E. Supervision of an assistant in speech-language pathology.

1. The practice of an assistant shall only be supervised by a speech-language pathologist who retains full legal and ethical responsibility for the client. A speech-language pathologist shall only supervise the equivalent of two full-time assistants.

2. The speech-language pathologist shall provide the level of supervision to the speech-language pathologist assistant necessary to ensure quality of care to include onsite supervision of at least two client sessions for each assistant being supervised every 30 days to directly observe and evaluate the performance of the assistant. The speech-language pathologist shall document such onsite observation and evaluation in the client record for each session.

18VAC30-21-145. Limited cerumen management.

A. In order for an audiologist to perform limited cerumen management, he shall:

1. Be a graduate of a doctoral program in audiology that is accredited by the Council on Academic Accreditation of the American Speech-Language-Hearing Association or other accrediting body recognized by the board and that included didactic education and supervised clinical experience in cerumen management as specified in subsection B of this section; or

2. Complete a course or workshop in cerumen management that provides training as specified in subsection B of this section and that is approved by the American Speech-Language Hearing Association or the American Academy of Audiology.

B. An audiologist shall maintain documentation evidencing satisfactory completion of training in cerumen management to include the following:

1. Recognizing the presence of preexisting contraindications that necessitate referral to a physician;

2. Recognizing patient distress and appropriate action to take if complications are encountered;

3. Use of infection control precautions;

4. Procedures for removal of cerumen, including cerumen loop, gentle water irrigation, suction, and the use of material for softening;

5. Observation of each type of cerumen management procedure performed by a qualified audiologist or physician; and

6. Successful performance, under direct supervision by an audiologist qualified to perform cerumen management or a physician, of each type of cerumen management procedure.

C. An audiologist shall not perform cerumen management on a patient who has any of the following preexisting contraindications:

1. A perforated tympanic membrane;

2. Inflammation, tenderness, drainage, or open wounds or traces of blood in the external ear canal;

3. History of ear surgery that results in distortion of the external ear canal;

4. HIV infection or bleeding disorders;

5. Actual or suspected foreign body in the ear, excluding hearing aid components that are located in the lateral one-third portion of the ear canal;

6. Stenosis or bony exostosis of the ear canal; or

7. Cerumen impaction that totally occludes the visualization of the tympanic membrane.

D. An audiologist performing cerumen management shall:

1. Obtain informed consent of the patient or legally responsible adult and document such consent and the procedure performed in the patient record.

2. Refer patients to a physician if they exhibit contraindications or experience any complication, such as dizziness, during the procedure.

VA.R. Doc. No. R16-4812; Filed August 1, 2016, 9:36 a.m.

BOARD OF DENTISTRY

Proposed Regulation

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-291, 18VAC60-21-301).**

Statutory Authority: §§ 54.1-2400 and 54.1-2709.5 of the Code of Virginia.

Public Hearing Information:

September 16, 2016 - 9:05 a.m. - Perimeter Building, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, VA 23233

Public Comment Deadline: October 21, 2016.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system. Section 54.1-2709.5 of the Code of Virginia stipulates a permit for administering sedation and anesthesia is required.

Purpose: The purpose of the amendments is to include the use of capnography as a requirement for dentists who administer moderate sedation, deep sedation, or general anesthesia in their offices. Capnography is the monitoring of the concentration or partial pressure of carbon dioxide in the respiratory gases. Capnography has been shown to be effective in the early detection of adverse respiratory events such as hypoventilation, esophageal intubation, and circuit disconnection thus being a means of preventing patient injury. During procedures done under sedation, capnography provides information on the frequency and regularity of ventilation. Capnography provides a method to detect life-threatening conditions, such as malposition of tracheal tubes, unsuspected ventilatory failure, circulatory failure, and defective breathing circuits. Capnography and pulse oximetry together could help prevent anesthesia mishaps. Since such equipment is the national standard for monitoring patients, it should be incorporated into Virginia regulation to ensure that the health and safety of dental patients is adequately protected.

Substance: 18VAC60-21-291 sets out the requirements for administration of conscious/moderate sedation; subsection B is amended to include an end-tidal carbon dioxide monitor (capnograph) as required equipment.

Currently, 18VAC60-21-301 C currently requires an end-tidal carbon dioxide monitor as equipment for use for intubated patients; the amendment requires an end-tidal carbon dioxide monitor (capnograph) for all patients receiving deep sedation or general anesthesia.

Issues: The primary advantage to the public is the greater protection for the citizens of the Commonwealth who receive moderate sedation, deep sedation, or general anesthesia in dental offices. The use of capnography coupled with pulse oximetry can prevent anesthesia/sedation problems that may be avoidable if a patient is adequately monitored. There are no disadvantages. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry proposes to require that a dentist who administers conscious/moderate sedation or deep sedation/general anesthesia maintain a capnograph/end tidal CO₂ monitor in working order and immediately available to areas where patients will be sedated and recover from sedation.

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

Estimated Economic Impact. In order to administer conscious/moderate sedation dentists must: 1) hold a conscious/moderate sedation permit, 2) hold a deep sedation/general anesthesia permit, or 3) be an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons

(AAOMS). In order to administer deep sedation/general anesthesia dentists must either hold a deep sedation/general anesthesia permit or be an oral and maxillofacial surgeon who maintains AAOMS membership.

The Board proposes to require that dentists who administer conscious/moderate sedation or deep sedation/general anesthesia maintain a capnograph/end tidal CO₂ monitor in working order and immediately available to areas where patients will be sedated and recover from sedation. The National Institutes of Health, National Library of Medicine Medical Dictionary defines capnograph as a monitoring device that measures the concentration of carbon dioxide in exhaled air and displays a numerical readout and waveform tracing. Some but likely not all dentists who administer conscious/moderate sedation or deep sedation/general anesthesia already have and use a capnograph.

According to the Department of Health Professions, capnographs cost approximately \$2,200 to \$4,500, depending on the technology and functionality of the equipment. The proposed amendment will require those dentists who administer conscious/moderate sedation or deep sedation/general anesthesia and do not already have a capnograph to obtain one.

A 2011 meta-analysis article in the Journal of Clinical Anesthesia found that cases of respiratory complications were 17.6 times more likely to be detected if monitored by capnography compared to standard monitoring alone.¹ Given this very large increase in the likelihood of detecting potentially life threatening complications, the benefits of the proposed amendment likely exceed the costs.

Businesses and Entities Affected. The proposed amendment pertains to the 51 dentists who have a permit for deep sedation/general anesthesia, the 194 dentists who have a permit for moderate/conscious sedation, and any dentists who are considering administering conscious/moderate sedation or deep sedation/general anesthesia in the future. Of the 258 licensed oral/maxillofacial surgeons, the majority would hold AAOMS membership that includes periodic inspections by AAOMS, and therefore, are not required to obtain an anesthesia/sedation permit from the Board. Most dentists work for dental practices, virtually all of which would qualify as small businesses.²

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

Projected Impact on Employment. The proposed amendment may have a small positive impact on employment at firms that sell or manufacture capnographs.

Effects on the Use and Value of Private Property. The proposed amendment may moderately increase the value of firms that sell or manufacture capnographs.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

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Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Most dentists work for dental practices, virtually all of which would qualify as small businesses. The proposal increases costs for those practices that offer conscious/moderate sedation or deep sedation/general anesthesia and do not already have a capnograph.

Alternative Method that Minimizes Adverse Impact. There is no apparent alternative that will reduce the adverse impact while still meeting the intended policy goal of a large reduction in potential health risk.

Adverse Impacts:

Businesses. The proposed amendment increases cost for those practices that offer conscious/moderate sedation or deep sedation/general anesthesia and do not already have a capnograph.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

¹Waugh JB, Epps CA, and Khodneva YA. "Capnography enhances surveillance of respiratory events during procedural sedation: a meta-analysis." *Journal of Clinical Anesthesia*, 2011 May; 23(3):189-96.

²Data source: Department of Health Professions.

Agency's Response to Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget.

Summary:

Amendments require that a dentist who administers conscious/moderate sedation or deep sedation or general anesthesia maintain an end-tidal carbon dioxide monitor (capnograph) in working order and immediately available to areas where patients will be sedated and recover from sedation.

18VAC60-21-291. Requirements for administration of conscious/moderate sedation.

A. Delegation of administration.

1. A dentist 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 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 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 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 permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to 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 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 or masks;
2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes 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; and
17. A end-tidal carbon dioxide monitor (capnograph).

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 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.
2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.
3. 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.

18VAC60-21-301. 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 preoperative verbal and written instructions including any dietary or medication restrictions.

B. Delegation of administration.

1. A dentist who does not meet the requirements of 18VAC60-21-300 shall only use the services of a 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 shall use either a dentist who meets the requirements of ~~18VAC60-20-300~~ 18VAC60-21-300, an anesthesiologist, or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.
2. A dentist who meets the requirements of ~~18VAC60-20-300~~ 18VAC60-21-300 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.

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3. Preceding the administration of deep sedation or general anesthesia, a dentist who meets the requirements of ~~18VAC60-20-300~~ 18VAC60-21-300 may use the services of the following personnel under indirect supervision to administer local anesthesia to 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 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 or masks;
2. Oral and nasopharyngeal airway management adjuncts;
3. Endotracheal tubes 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~~ An end-tidal carbon dioxide monitor (capnograph);
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, oxygen saturation, and respiration.
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 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. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

VA.R. Doc. No. R16-4438; Filed August 1, 2016, 11:55 a.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: 18VAC85-170. Regulations Governing the Practice of Genetic Counselors (adding 18VAC85-170-10 through 18VAC85-170-190).

Statutory Authority: §§ 54.1-2400 and 54.1-2957.18 of the Code of Virginia.

Public Hearing Information:

October 3, 2016 - 1:05 p.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: October 21, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Specific authority requiring the board to regulate genetic counselors is found in § 54.1-2957.19 of the Code of Virginia.

Purpose: Applying established criteria for studying the need to regulate a profession, the Board of Health Professions (BHP) conducted a study in 2011 of the need to regulate genetic counselors. In its report, licensure for genetic counselors was recommended. The board noted the inherent risk of harm and the need to protect the public health and safety. It also recommended genetic counselors be regulated through the advisory committee model under the Board of Medicine. Findings of the BHP study were:

1. Genetic medicine is expanding rapidly. Genetic medicine has traditionally focused on prenatal and postnatal health and genetic diseases. In the past two decades, however, rapid advances in genetic technology have expanded the domain of genetic medicine into several specialties, particularly oncology and pharmacology. Continued expansion of the field could revolutionize the practice of medicine in all specialties. Personalized medicine may be possible, with a focus on prediction and prevention over diagnosis and treatment.
2. Genetic medicine is still in its infancy. Although there are thousands of genetic tests, only a few have clinically useful applications and most are very new. Many physicians do not have significant training in genetics, and clinical guidelines are often underdeveloped, under disseminated, or both. Physicians often lack the knowledge to provide adequate genetic counseling or to refer patients to quality genetic counseling resources. Genetic counselors have only recently expanded from their prenatal and postnatal beginnings in significant numbers and into specialties with clinical useful tests. The total number of genetic professionals remains limited.
3. Genetic tests and commercial genetic testing services have proliferated ahead of clinical knowledge and regulation. The genetic testing industry has expanded rapidly, including the marketing of genetic tests directly to consumers. Genetic testing companies provide some rudimentary analysis and customer service. Although it

may not be intended as genetic counseling or medical advice, it may, from time to time, cross the line. Patients may rely on this analysis and service in the absence of sufficient genetic counseling or referrals from licensed practitioners. The U.S. Food and Drug Administration (FDA) is currently examining a new regulatory framework for genetic tests, placing regulations on genetic testing companies for the first time.

4. Regulation of genetic counselors may have little impact on the genetic testing industry. Some of the services provided by genetic testing companies may cross the line into the practice of medicine. If so, these practices are already illegal if not delegated or performed by a licensed practitioner in accordance with statute and regulation. Regulation of genetic counselors in other states does not appear to have reduced access to genetic testing companies or services. Some states have directly regulated genetic tests, particularly direct-to-consumer genetic tests, and the FDA is poised to do so as well.

5. Genetic counselors provide diagnostic services as well as patient counseling. Genetic counselors assist physicians in determining if a genetic test is appropriate and if so, which test is appropriate. They assist physicians in interpreting the results of genetic tests, either for diagnosing genetic conditions or for determining the risk of developing gene-linked conditions. Genetic counselors help patients understand the results of genetic tests and the options available to them. They help patients cope with implications of genetic tests and make referrals if appropriate.

6. Practices inherent to the profession pose a potential risk of harm to patients. Patients rely on the advice of genetic counselors in making significant medical decisions. These include major prophylactic surgeries, decisions to get pregnant or terminate a pregnancy and decisions regarding the frequency and aggressiveness of preventative screenings for fatal diseases. Genetic counselors provide counseling and referrals to help patients cope with the difficult pragmatic, ethical, and social implications related to genetic testing. Since many of these decisions are related to controversial political and moral issues, patients rely on genetic counselors to provide unbiased information and protect patient privacy.

7. Instances of harm from the unregulated practice of genetic counseling are limited or tenuous. Instances of harm related to a lack of quality genetic counseling are numerous in the literature. However, these instances of harm stem from inadequate counseling provided by licensed practitioners, or a failure to refer for genetic counseling, not from the unregulated practice of genetic counseling. Often, physicians and patients alike rely on generic information or customer service provided by testing companies along with test results. These services

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are often not intended to be medical genetic counseling, but many skirt the line.

8. The potential for harm from the unregulated practice of genetic counseling could expand rapidly. Although the FDA is currently developing a regulatory framework for genetic tests, the extent and efficacy of these regulations are as yet unknown. Genetic tests continue to proliferate in variety, scope, and availability. Genetic testing companies and regulated and unregulated providers may increasingly fill the gap between physician knowledge, an inadequate supply of genetic professionals, and the need for counseling services.

Subsequently, Chapters 10 and 266 of the 2014 Acts of Assembly establish licensure for genetic counselors under the Board of Medicine. The Advisory Board on Genetic Counseling reviewed the statutory mandate for the Board of Medicine to establish the qualifications for licensure and renewal and the standards of practice for the profession. Regulations necessary to ensure minimal competency for practice, continued competency for renewal of licensure, and standards of conduct for safe practice were recommended and adopted by the board.

Substance: Regulations for licensure of genetic counselors have not been specifically developed or adopted, but the structure and content of 18VAC85-170 follows the pattern of regulations for other allied health professions, including definitions; requirement for current name and address of record; applicability of public participation guidelines; fees for initial licensure, renewal of license, and administration of the profession; qualifications or credentials required for licensure, including a "grandfathering provision," which is applicable until July 1, 2016, and specified in § 54.1-2957.18 of the Code of Virginia; requirements for temporary licensure, also specified by statute; requirements and schedule for renewal of licensure, including continuing education and current certification; requirements for reactivation of an inactive license or reinstatement of a lapsed license; supervisory responsibility of a genetic counselor for a person practicing under a temporary license; scope of practice of genetic counselors consistent with job description of the American Board of Genetic Counseling; standards of practice consistent with the National Society of Genetic Counselors; requirements for confidentiality and patient records; standards for practitioner-patient communication, including the exercise of the conscience clause; practitioner responsibilities; and prohibition of sexual contact.

Issues: The primary advantage to the public is greater protection for patients or consumers of genetic counseling who will have an avenue for filing a complaint if they believe the counselor has violated a law or regulation or acted unprofessionally. There are no disadvantages for the public. There are no advantages or disadvantages to the agency or the Commonwealth. This proposal represents a compromise

between the statutory requirement for a conscience clause and those who opposed to its inclusion.

The Deputy Director of the Department of Health Professions has performed a competitive impact analysis for this regulation. The board is authorized under §§ 54.1-2400 and 54.1-2957.19 of the Code of Virginia to establish the qualifications for licensure that are necessary to ensure the competence and integrity of licensees to engage in the practice of genetic counseling.

As mandated by Chapters 10 and 266 of the 2014 Acts of Assembly, the board has established licensure for genetic counselors. Qualifications for licensure are specified in the Code of Virginia; regulatory requirements are identical and do not exceed the statutory provisions. Other provisions, including fees charged to applicants and licensees, the biennial renewal schedule, and responsibilities of licensees, are identical to all other allied health professions regulated under the board. Continuing education requirements of 50 hours per biennium are consistent with the recertification requirement for maintenance of professional certification. Standards of professional conduct, including requirements for confidentiality, recordkeeping, communication with patients, and prohibition on sexual contact, are also identical to other professional regulations under the Board of Medicine. The provision for exercise of the conscience clause is unique to genetic counseling but is mandated by § 54.1-2957.21 of the Code of Virginia.

Therefore, the requirement for licensure of all practicing genetic counselors in the Commonwealth and the specific requirements associated with that licensure are a foreseeable result of the statutes requiring the board to license and regulate genetic counselors in the Commonwealth. Any restraint on competition that results from these regulations is in accord with the General Assembly's policy as articulated in § 54.1-100 of the Code of Virginia and is necessary for the preservation of the health, safety, and welfare of the public and will further the public's need for assurances of professional ability and competence.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As mandated by Chapter 10 of the 2014 Acts of the Assembly, the Board of Medicine (Board) proposes to promulgate rules for new licensure of genetic counselors.

Result of Analysis. There is insufficient information to ascertain whether the benefits of this proposed regulation will outweigh its costs.

Estimated Economic Impact. Currently, genetic counselors are not licensed. In 2014, the General Assembly passed legislation¹ that: 1) directed the Board to adopt regulations governing the practice of genetic counselors that meets specific criteria,² 2) made it unlawful for individuals to practice, or hold themselves out as practicing, genetic counseling³ without a valid Board license, 3) specified that

applicants for licensure in genetic counseling have a master's degree from a genetic counseling education program that is accredited by the accreditation Council of Genetic Counseling, and 4) specified that applicants hold a current, valid certificate issued by the American Board of Genetic Counseling or American Board of Medical Genetics to practice counseling. The General Assembly made provision in this legislation for the Board to waive the educational requirements above for individuals who 1) apply for licensure before July 1, 2016,⁴ 2) have at least 20 years of documented work experience practicing genetic counseling, 3) submit two letters of recommendation (one from a genetic counselor and one from a physician), 4) have completed at least 25 hours of continuing education and 5) comply with the Board's regulations relating to the National Society of Genetic Counselors Code of Ethics. The General Assembly also made provision for the Board to grant temporary licenses to applicants for licensure who have been granted Active Candidate status by the American Board of Genetic Counseling and who are practicing under the supervision of a licensed genetic counselor or physician.

Finally, the General Assembly included a conscience clause (Code of Virginia § 54.1-2057.20) in the legislation that states:

"Nothing in this chapter shall be construed to require any genetic counselor to participate in counseling that conflicts with their deeply-held moral or religious beliefs, nor shall licensing of any genetic counselor be contingent upon participation in such counseling. Refusal to participate in counseling that conflicts with the counselor's deeply-held moral or religious beliefs shall not form the basis for any claim of damages or for any disciplinary or recriminatory action against the genetic counselor, provided the genetic counselor informs the patient that he will not participate in such counseling and offers to direct the patient to the online directory of licensed genetic counselors maintained by the Board."

The Board now proposes to promulgate this regulation for licensure of genetic counselors that mirrors legislative requirements for initial licensure and grandfathering. The Board proposes to set fees for initial licensure (\$130), temporary licensure (\$50), biennial renewal of active licenses (\$135) and inactive licenses (\$70), late renewal (\$50 added to the renewal fee), license reinstatement (\$180), license reinstatement after revocation pursuant to § 54.1-2408.2 (\$2,000) and verification letters (\$10). The Board additionally proposes to charge the same fees for duplicate licenses (\$5), duplicate wall certificates (\$15) and returned checks (\$35) as they do for all Board licensure programs.

This proposed regulation will also require licensees to complete 50 hours of continuing education (CE) every two years (30 hours of Category 1 training⁵ and 20 hours of Category 2 training⁶ or professional activity). The Chair of the Genetic Counseling Advisory Board reports that costs for

CE can vary widely; some CE would likely be free and some opportunities can cost as much as several hundred dollars (plus travel costs and cost of time spent) for national conferences. Genetic counselors will incur costs for pursuing and maintaining licensure that include paying licensure fees, paying for CE (when there is a cost attached) and costs for time spent on these activities (including travel time).

The Board also proposes to set requirements for the exercise of the legislation's conscience clause⁷ that include: 1) requirements for informing patients in a timely fashion if the genetic counselor has a religious or deeply held moral belief that precludes the provision of services (including informing the patient, prior to taking them on as a patient, if there are any limitations on the services that the genetic counselor will be willing to provide), 2) a requirement to direct the patient to an online directory, and 3) a requirement to offer to refer the patient to another licensed health care professional. The last requirement appears to have been added in response to public comment from individuals concerned that there was not currently an online list for patients to access, and that patient care could be delayed and suffer on account of this.

Businesses and Entities Affected. These proposed regulatory changes will affect all genetic counselors in the Commonwealth. The Genetic Counseling Advisory Board estimates that there are 35 to 40 genetic counselors in the Commonwealth.

Localities Particularly Affected. No locality will be disproportionately affected by these proposed regulatory changes.

Projected Impact on Employment. Absent a legislative change to change the end date for grandfathering, the one genetic counselor who has practiced in the Commonwealth (presumably for many years) without a master's degree will either have to stop practicing or incur likely large costs to gain the required education.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Genetic counselors who are in private practice will incur the costs listed above for licensure and CE.

Alternative Method that Minimizes Adverse Impact. There are no alternatives that would both lower costs and meet the legislative mandate for licensure.

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Adverse Impacts:

Businesses. Genetic counselors who are in private practice will incur the costs listed above for licensure and CE.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

¹Chapter 10 of the 2014 Acts of Assembly (<http://leg1.state.va.us/cgi-bin/legp504.exe?141+ful+CHAP0010>) and the identical Chapter 266.

²§ 54.1-2957.18 (A) requires that Board regulations on this matter: 1) set forth requirements for licensure to practice genetic counseling, 2) provide for appropriate application and renewal fees, 3) include requirements for licensure renewal and continuing education, 4) be consistent with the American Board of Genetic Counseling's current job description for the profession and the standards of practice of the National Society of Genetic Counselors and 5) allow for independent practice.

³The General Assembly provides exemptions to this provision for physicians practicing within their scopes of practice (so long as he does not use the title "genetic counselor"), students who are performing genetic counseling under supervision as a part of a course of studies and employees of rare disease organizations who are certified by the American Board of Genetic Counseling or the American Board of Medical Genetics who provide genetic counselling for fewer than 10 days per year.

⁴Board staff reports that no individuals will be able to apply to be grandfathered in to licensure before the required deadline because there are currently no regulations in effect under which to apply. Legislation would have to be introduced to change this date in order for any individual to qualify to have the legislatively required master's degree waived. Board staff reports that only one genetic counselor in the state does not already have a master's degree.

⁵Activities approved by the American Board of Genetic Counselors, the American Board of Medical Genetics or the National Society of Genetic Counselors.

⁶Category 2 training can include consultation with another genetic counselor, independent research or reading, authorship, clinical supervision, volunteer leadership in the profession, preparation for a presentation or other such experiences that promote continued learning.

⁷Board staff reports that the information they have on genetic counselors in the state indicates that this is unlikely to be an issue as no genetic counselor in current practice would exercise this conscience clause.

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for Regulations Governing the Practice of Genetic Counselors with the exception of the adverse impact notification to the Joint Commission on Administrative Rules, House Committee on Appropriations, and the Senate Committee on Finance.

The "adverse impact" of this regulation is no different from and no greater than any of the 80 professions regulated by boards at the Department of Health Professions; all of which require initial and ongoing evidence of competency and fees for the operation of the board and department.

Summary:

As mandated by Chapters 10 and 266 of the 2014 Acts of Assembly, the Board of Medicine is promulgating Regulations Governing the Practice of Genetic Counselors

(18VAC85-70) to establish licensure for genetic counselors. Qualifications for licensure are specified in the Code of Virginia, so regulations set identical requirements. Other provisions, including fees charged to applicants and licensees, the biennial renewal schedule, and responsibilities of licensees, are identical to other allied health professions regulated under the board. Continuing education requirements of 50 hours per biennium are consistent with the recertification requirement for maintenance of professional certification. Standards of professional conduct, including requirements for confidentiality, recordkeeping, communication with patients, and prohibition on sexual contact, are also identical to other professional regulations under the Board of Medicine. The provision for exercise of the conscience clause is unique to genetic counseling and is mandated by § 54.1-2957.21 of the Code of Virginia.

CHAPTER 170

REGULATIONS GOVERNING THE PRACTICE OF GENETIC COUNSELORS

Part I

General Provisions

18VAC85-170-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Genetic counselor"

"Practice of genetic counseling"

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

"ABGC" means the American Board of Genetic Counseling.

"ABMG" means the American Board of Medical Genetics.

"Active practice" means a minimum of 160 hours of professional practice as a genetic counselor within the 24-month period immediately preceding application for reinstatement or reactivation of licensure. The active practice of genetic counseling may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Conscience clause" means the provision of § 54.1-2957.21 of the Code of Virginia.

"NSGC" means the National Society of Genetic Counselors.

18VAC85-170-20. Public participation.

A separate board regulation, Public Participation Guidelines (18VAC85-11), provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-170-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-170-40. Fees.

The following fees are required:

1. The application fee for licensure, payable at the time the application is filed, shall be \$130.
2. The application fee for a temporary license, payable at the time the application is filed, shall be \$50.
2. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
4. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 and shall be submitted with an application for licensure reinstatement.
5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
6. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
7. The fee for a returned check shall be \$35.
8. The fee for a letter of good standing or letter of verification to another jurisdiction shall be \$10.

Part II

Requirements for Licensure as a Genetic Counselor

18VAC85-170-50. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-170-40.
2. Verification of a professional credential in genetic counseling as required in 18VAC85-170-60.
3. Verification of practice as required on the application form.
4. If licensed or certified in any other jurisdiction, documentation of any disciplinary action taken or pending in that jurisdiction.

18VAC85-170-60. Licensure requirements.

A. An applicant for a license to practice as a genetic counselor shall provide documentation of (i) a master's degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling and (ii) a

current, valid certificate issued by the ABGC or ABMG to practice genetic counseling.

B. Pursuant to § 54.1-2957.19 D of the Code of Virginia, applicants for licensure who do not meet the requirements of subsection A of this section may be issued a license provided they (i) apply for licensure before July 1, 2016; (ii) comply with the board's regulations relating to the NSGC Code of Ethics; (iii) have at least 20 years of documented work experience practicing genetic counseling; (iv) submit two letters of recommendation, one from a genetic counselor and another from a physician; and (v) have completed, within the last five years, 25 hours of continuing education approved by the NSGC or the ABGC. For the purpose of this subsection, the board deems the provisions of Part IV (18VAC85-170-110 et seq.) of this chapter to be consistent with the NSGC Code of Ethics.

C. An applicant for a temporary license shall provide documentation of having been granted the active candidate status by the ABGC. Such license shall expire 12 months from issuance or upon expiration of active candidate status, whichever comes first.

Part III

Renewal and Reinstatement

18VAC85-170-70. Renewal of license.

A. Every licensed genetic counselor who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:

1. Submit the prescribed renewal fee; and
2. Attest to having met the continuing education requirements of 18VAC85-170-100.

B. The license of a genetic counselor that has not been renewed by the first day of the month following the month in which renewal is required is lapsed. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee, a late fee as prescribed in 18VAC85-170-40, and attestation of compliance with continuing education requirements.

18VAC85-170-80. Inactive license.

A licensed genetic counselor who holds a current, unrestricted license in Virginia shall, upon a request at the time of renewal and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice genetic counseling in Virginia.

18VAC85-170-90. Reactivation or reinstatement.

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a genetic counselor shall submit evidence of competency to return to active practice to include one of the following:

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1. Information on continued active practice in another jurisdiction during the period in which the license has been inactive or lapsed;

2. Attestation of meeting requirements for continuing education as specified in 18VAC85-170-100 for each biennium in which the license has been inactive or lapsed, not to exceed four years; or

3. Current certification by ABGC or ABMG.

B. To reactivate an inactive license, a genetic counselor shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license that has been lapsed for more than two years a genetic counselor shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-170-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience, or reexamination.

D. A genetic counselor whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board, and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-170-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-170-100. Continuing education requirements.

A. In order to renew an active license biennially, a licensee shall complete the Continued Competency Activity and Assessment Form that is provided by the board indicating completion of at least 50 contact hours of continuing learning activities as follows:

1. A minimum of 30 of the 50 hours shall be in Category 1 activities approved by the ABGC, the ABMG, or the NSGC and may include in-service training, self-study courses, continuing education courses, or professional workshops.

2. No more than 20 of the 50 hours may be Category 2 activities or professional activity credits, which may include consultation with another counselor or a physician, independent reading or research, authorship, clinical supervision, volunteer leadership in the profession, preparation for a presentation, or other such experiences that promote continued learning.

B. A licensee shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The licensee shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The licensees selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV

Scope of Practice

18VAC85-170-110. General responsibility.

A genetic counselor shall engage in the practice of genetic counseling, as defined in § 54.1-2900 of the Code of Virginia. The practice of genetic counseling may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

18VAC85-170-120. Supervisory responsibilities.

A. A genetic counselor shall be responsible for supervision of unlicensed personnel who work under his direction and ultimately responsible and accountable for patient care and outcomes under his clinical supervision.

B. Delegation to unlicensed personnel shall:

1. Not include delegation of the discretionary aspects of the initial assessment, evaluation, or development of recommendations for a patient, or any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed genetic counselor;

2. Only be made if, in the judgment of the genetic counselor, the task or procedures do not require the exercise of professional judgment and can be properly and safely performed by appropriately trained unlicensed personnel, and the delegation does not jeopardize the health or safety of the patient; and

3. Be communicated on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

18VAC85-170-125. Responsibilities of a temporary licensee.

A. A person holding a temporary license as a genetic counselor shall practice under the clinical supervision of a genetic counselor or a physician licensed in the Commonwealth.

B. Clinical supervision shall require that:

1. The supervisor and temporary licensee routinely meet to review and evaluate patient care and treatment; and
2. The supervisor reviews notes on patient care entered by the temporary licensee prior to reporting study results and making recommendations to a patient. Such review shall be documented by some method in a patient record.

Part V

Standards of Professional Conduct

18VAC85-170-130. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-170-140. Patient records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible, and complete patient records.

D. Practitioners who are employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:
 - a. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;
 - b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or
 - c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.
2. Post information or in some manner inform all patients concerning the timeframe for record retention and destruction. Patient records shall only be destroyed in a

manner that protects patient confidentiality, such as by incineration or shredding.

3. When closing, selling, or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

18VAC85-170-150. Practitioner-patient communication; conscience clause; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately withhold pertinent findings or information or make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a medication, treatment, or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. When a genetic procedure is recommended, informed consent shall be obtained from the patient in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner practicing genetic counseling in Virginia would tell a patient.

a. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

b. An exception to the requirement for consent prior to performance of a genetic procedure may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

c. For the purposes of this provision, "genetic procedure" means any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care and for which the usual practice within the health care entity is to document specific informed consent from the patient or surrogate decisionmaker prior to proceeding.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Exercise of the conscience clause.

1. Notwithstanding provisions of subsection A of this section, a practitioner may exercise the conscience clause

Regulations

pursuant to requirements of § 54.1-2957.21 of the Code of Virginia. If a genetic counselor has deeply held moral or religious beliefs that may prevent him from participating in genetic counseling, he shall immediately inform a prospective patient with specificity about any associated limitations on counseling resulting therefrom, prior to the initiation of the patient-practitioner relationship and shall:

a. Offer to refer the patient to another licensed health care practitioner with a relevant scope of practice and direct the patient to the online directory of licensed genetic counselors maintained by the board;

b. Immediately notify any referring practitioner, if known, of this refusal to participate in genetic counseling for the patient; and

c. Alert the patient and the referring practitioner if the referral is time sensitive.

2. If, during the course of patient care, the genetic counselor encounters a situation in which his deeply held moral or religious beliefs would prevent him from participating in counseling, he shall immediately inform the patient with specificity about any associated limitations on counseling and shall:

a. Document the communication of such information in the patient record;

b. Offer to refer the patient to another licensed health care practitioner with a relevant scope of practice and direct the patient to the online directory of licensed genetic counselors;

c. Immediately notify any referring practitioner, if known, of such refusal and referral of the patient; and

d. Alert the patient and the referring practitioner if the referral is time sensitive.

C. Termination of the practitioner-patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-170-160. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner-patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-170-170. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.

"Remuneration" means compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-170-180. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the practitioner-patient relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient neither changes the nature of the conduct nor negates the statutory prohibition.

C. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust.

knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient means spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC85-170-190. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

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

FORMS (18VAC85-170)

[Continued Competency Activity and Assessment Form \(undated\)](#)

VA.R. Doc. No. R15-4172; Filed August 1, 2016, 12:03 p.m.

BOARD OF NURSING

Final Regulation

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

Title of Regulation: 18VAC90-26. Regulations for Nurse Aide Education Programs (amending 18VAC90-26-40).

Statutory Authority: §§ 54.1-2400, 54.1-3005, and 54.1-3028.1 of the Code of Virginia.

Effective Date: September 21, 2016.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

These conforming amendments are made pursuant to Chapters 109 and 582 of the 2016 Acts of Assembly. The amendments add training in observational and reporting techniques to the list of training and education requirements for nurse aide training programs.

18VAC90-26-40. Requirements for the curriculum.

A. Curriculum content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact with a nursing facility client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas:
 - a. Communication and interpersonal skills.
 - b. Infection control.
 - c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.
 - d. Promoting client independence.
 - e. Respecting clients' rights.
2. Basic skills.
 - a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.
 - b. Measuring and recording routine vital signs.
 - c. Measuring and recording height and weight.
 - d. Caring for the client's environment.
 - e. Measuring and recording fluid and food intake and output.
 - f. Performing basic emergency measures.
 - g. Caring for a client when death is imminent.
3. Personal care skills.
 - a. Bathing and oral hygiene.
 - b. Grooming.
 - c. Dressing.
 - d. Toileting.
 - e. Assisting with eating and hydration, including proper feeding techniques.
 - f. Caring for skin, to include prevention of pressure ulcers.
 - g. Transfer, positioning, and turning.
4. Individual client's needs, including mental health and social service needs.
 - a. Modifying the aide's behavior in response to the behavior of clients.
 - b. Identifying developmental tasks associated with the aging process.

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- c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.
 - d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.
 - e. Utilizing the client's family or concerned others as a source of emotional support.
 - f. Responding appropriately to the client's behavior including, but not limited to, aggressive behavior and language.
 - g. Providing appropriate clinical care to the aged and disabled.
 - h. Providing culturally sensitive care.
5. Care of the cognitively or sensory (visual and auditory) impaired client.
- a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).
 - b. Communicating with cognitively or sensory impaired clients.
 - c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.
 - d. Using methods to reduce the effects of cognitive impairment.
6. Skills for basic restorative services.
- a. Using assistive devices in transferring, ambulation, eating, and dressing.
 - b. Maintaining range of motion.
 - c. Turning and positioning, both in bed and chair.
 - d. Bowel and bladder training.
 - e. Caring for and using prosthetic and orthotic devices.
 - f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.
7. Clients' rights.
- a. Providing privacy and maintaining confidentiality.
 - b. Promoting the client's right to make personal choices to accommodate individual needs.
 - c. Giving assistance in resolving grievances and disputes.
 - d. Providing assistance necessary to participate in client and family groups and other activities.
 - e. Maintaining care and security of the client's personal possessions.
 - f. Promoting the client's rights to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate staff.

- g. Avoiding the need for restraints in accordance with current professional standards.
- 8. Legal and regulatory aspects of practice as a certified nurse aide including, but not limited to, consequences of abuse, neglect, misappropriation of client property, and unprofessional conduct.
- 9. Occupational health and safety measures.
- 10. Appropriate management of conflict.
- 11. Observational and reporting techniques.

B. Unit objectives.

- 1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.
- 2. Objectives shall be reviewed with the students at the beginning of each unit.

C. Curriculum changes. Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the onsite visit or with the report submitted by the program coordinator in the intervening year.

VA.R. Doc. No. R16-4766; Filed July 26, 2016, 2:50 p.m.

Final Regulation

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

Title of Regulation: **18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-10 through 18VAC90-50-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: September 21, 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:

The amendments change references of "certification" to "licensure," eliminate one examination for licensure, and include a requirement for a criminal background check. The amendments make conforming changes to the regulation pursuant to Chapter 324 of the 2016 Acts of Assembly.

CHAPTER 50
REGULATIONS GOVERNING THE CERTIFICATION
LICENSURE OF MASSAGE THERAPISTS

Part I
General Provisions

18VAC90-50-10. Definitions.

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise ascribed to them in § 54.1-3000 of the Code of Virginia:

"Board" means the Board of Nursing.

~~"Certified massage "Massage therapist" means a person who meets the qualifications specified in this chapter and who is currently certified by the board. Only someone who is certified by the board as a massage therapist may use any designation tending to imply that he is a certified massage therapist or massage therapist.~~

~~"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.~~

B. The following word when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

18VAC90-50-20. Operational requirements.

A. Requirements for current mailing address.

1. Each applicant or ~~certificate holder~~ licensee shall maintain a current address of record with the board. Any change in the address of record or the public address, if different from the address of record, shall be submitted electronically or in writing to the board within 30 days of such change.

2. All required notices mailed by the board to any applicant or ~~certificate holder~~ licensee shall be validly given when mailed to the latest address of record on file with the board.

B. A ~~certificate holder~~ licensee who has had a change of name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or a court order evidencing the change. A duplicate ~~certificate~~ license shall be issued by the board upon receipt of such evidence and the required fee.

C. Each ~~certified~~ licensed massage therapist shall conspicuously post his current Virginia ~~certificate~~ license in a public area at his practice location.

18VAC90-50-30. Fees.

A. Fees listed in this section shall be payable to the Treasurer of Virginia and shall not be refunded unless otherwise provided.

B. Fees required by the board are:

1. Application and initial certification <u>licensure</u>	\$140
2. Biennial renewal	\$95
3. Late renewal	\$30
4. Reinstatement of certification <u>licensure</u>	\$150
5. Reinstatement after suspension or revocation	\$200
6. Duplicate certificate <u>license</u>	\$15
7. Replacement wall certificate	\$25
8. Verification of certification <u>licensure</u>	\$35
9. Transcript of all or part of applicant/certificate holder <u>applicant/licensee</u> records	\$35
10. Returned check charge	\$35

Part II

Requirements for ~~Certification~~ Licensure

18VAC90-50-40. Initial ~~certification~~ licensure.

A. An applicant seeking initial ~~certification~~ licensure shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program certified or approved by the State Council of Higher Education for Virginia or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of § ~~22.1-320~~ 23-276.2 of the Code of Virginia;
3. Has passed ~~the National Certification Exam for Therapeutic Massage and Bodywork, the National Certification Exam for Therapeutic Massage,~~ the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board; ~~and~~
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90; ~~and~~
5. Has completed a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

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~~B. No application for certification under provisions of § 54.1-3029 B of the Code of Virginia shall be considered unless submitted prior to July 1, 1998.~~

~~C. B.~~ An applicant who has been licensed or certified in another country and who, in the opinion of the board, meets the educational requirements shall take and pass an examination as required in subsection A of this section in order to become certified licensed.

18VAC90-50-50. Certification Licensure by endorsement.

A. A massage therapist who has been licensed ~~or certified~~ in another ~~U.S.~~ United States jurisdiction with requirements substantially equivalent to those stated in 18VAC90-50-40, and who is in good standing or is eligible for reinstatement, if lapsed, shall be eligible to apply for certification licensure by endorsement in Virginia.

B. An applicant for certification licensure by endorsement shall submit a completed application and required fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia, to the board and shall submit the required form to the appropriate credentialing agency in the state of original licensure or certification for verification.

18VAC90-50-60. Provisional certification licensure.

A. An eligible candidate who has filed a completed application for certification licensure in Virginia may engage in the provisional practice of massage therapy in Virginia for a period not to exceed 90 days upon written authorization from the board.

B. The designation of "massage therapist" or "~~certified~~ licensed massage therapist" shall not be used by the applicant during the 90 days of provisional certification licensure.

C. An applicant who fails the certifying licensing examination shall have his provisional certification licensure withdrawn upon the receipt of the examination results and shall not be eligible for certification licensure until he passes such examination.

Part III

Renewal and Reinstatement

18VAC90-50-70. Renewal of certification licensure.

A. ~~Certificate holders~~ Licensees born in even-numbered years shall renew their certificates licenses by the last day of the birth month in even-numbered years. ~~Certificate holders~~ Licensees born in odd-numbered years shall renew their certificates licenses by the last day of the birth month in odd-numbered years.

B. The ~~certificate holder~~ licensee shall complete the renewal form and submit it with the required fee and attest that he has complied with continuing competency requirements of 18VAC90-50-75.

C. Failure to receive the application for renewal shall not relieve the ~~certified~~ licensed massage therapist of the

responsibility for renewing the ~~certificate~~ license by the expiration date.

D. The ~~certificate~~ license shall automatically lapse by the last day of the birth month if not renewed, and use of the title "massage therapist" or "~~certified~~ licensed massage therapist" is prohibited.

18VAC90-50-75. Continuing competency requirements.

A. In order to renew a ~~certificate~~ license biennially, a ~~certified~~ licensed massage therapist shall:

1. Hold current certification by the NCBTMB; or
2. Complete at least 24 hours of continuing education or learning activities with at least one hour in professional ethics. Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy and may be distributed as follows:

- a. A minimum of 12 of the 24 hours shall be in activities or courses provided by an NCBTMB-approved provider and may include seminars, workshops, home study courses, and continuing education courses.
- b. No more than 12 of the 24 hours may be activities or courses that may include consultation, independent reading or research, preparation for a presentation, a course in cardiopulmonary resuscitation, or other such experiences that promote continued learning.

B. A massage therapist shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial certification licensure in Virginia.

C. The massage therapist shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active certificate license.

D. The board shall periodically conduct a random audit of ~~certificate holders~~ licensees to determine compliance. The persons selected for the audit shall provide evidence of current NCBTMB certification or the completed continued competency form provided by the board and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the massage therapist to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the ~~certificate holder~~ licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the ~~certificate holder~~ licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-50-80. Reinstatement of certificates licenses.

A. A massage therapist whose ~~certificate~~ license has lapsed may reinstate ~~his certification~~ licensure within one renewal

period by attesting to completion of continuing competency requirements for the period and payment of the current renewal fee and the late renewal fee.

B. A massage therapist whose ~~certificate~~ license has lapsed for more than one renewal period shall file a reinstatement application, attest to completion of continuing competency requirements for the period in which the ~~certificate~~ license has been lapsed, not to exceed four years, and pay the reinstatement fee.

C. A massage therapist whose ~~certificate~~ license has been suspended or revoked may apply for reinstatement by filing a reinstatement application meeting the requirements of subsection B of this section, and paying the fee for reinstatement after suspension or revocation.

D. The board may require evidence that the massage therapist is prepared to resume practice in a competent manner.

Part IV Disciplinary Provisions

18VAC90-50-90. Disciplinary provisions.

The board has the authority to deny, revoke, or suspend a ~~certificate~~ license issued by it or to otherwise discipline a ~~certificate holder~~ licensee upon proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit which shall mean, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial ~~certification~~ licensure, or reinstatement or renewal of a ~~certificate~~ license; or
 - c. Misrepresenting one's qualifications including scope of practice.
2. Unprofessional conduct which shall mean, but shall not be limited to:
 - a. Performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;
 - c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;
 - d. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include but not be limited to actions that

result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "~~certified~~ licensed massage therapist";

h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; or

i. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

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 (18VAC90-50)

~~Instructions and Application for Certification as a Massage Therapist (rev. 6/11).~~

~~Instructions and Application for Certification by Endorsement - Massage Therapist (rev. 6/11).~~

~~Massage Therapist Certification/Licensure Verification Form (rev. 7/07).~~

~~Application for Reinstatement of Certificate as a Massage Therapist (rev. 6/11).~~

~~Instructions for Application for Reinstatement following Suspension or Revocation - Certified Massage Therapist (rev. 7/07).~~

~~Application for Reinstatement of Certificate as a Massage Therapist following Suspension or Revocation (rev. 7/07).~~

~~Application for Licensure as a Massage Therapist - online application only at http://www.dhp.virginia.gov/nursing/nursing_forms.htm#MassageTherapist~~

~~[Massage Therapist Certification/Licensure Verification Form \(rev. 4/2014\)](#)~~

~~[Application for Reinstatement of Licensure as a Massage Therapist \(rev. 7/2016\)](#)~~

~~[Instructions and Application for Reinstatement of Licensure as a Licensed Massage Therapist following Suspension or Revocation \(7/2016\)](#)~~

VA.R. Doc. No. R16-4767; Filed July 27, 2016, 2:54 p.m.

Regulations

BOARD OF OPTOMETRY

Final Regulation

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

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-70).**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Effective Date: September 21, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendments conform the regulation to Chapter 89 of the 2016 Acts of Assembly by (i) increasing the total number of hours of continuing education required for optometrists from 16 to 20; (ii) requiring that at least 10 of such hours be obtained through real-time interactive activities; (iii) providing that no more than two of such hours may consist of courses related to recordkeeping or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products; (iv) requiring, for optometrists certified as therapeutic pharmaceutical agents, that at least 10 of the 20 hours be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures; and (v) allowing optometrists who complete more than 20 hours of continuing education in a year to carry forward up to 10 hours to the next year.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of ~~16~~ 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. ~~Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 20 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).~~

including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least ~~two~~ 10 of the required continuing education hours shall be ~~directly related to the treatment of the human eye and its adnexa with pharmaceutical agents in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.~~

3. ~~Courses for which the primary purpose is to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.~~

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31 unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (C.O.P.E.).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the ~~provider/sponsor~~ provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

V.A.R. Doc. No. R16-4763; Filed July 27, 2016, 1:49 p.m.

BOARD OF COUNSELING

Proposed Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-20).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-30).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-20).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-20).

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

Public Hearing Information:

September 22, 2016 - 10 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd floor, Henrico, VA

Public Comment Deadline: October 21, 2016.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act that are reasonable and necessary and the authority to levy and collect fees that are sufficient to cover all expenses for the administration of a regulatory program.

Section 54.1-113 of the Code of Virginia requires the board to revise the fees levied by it for certification or licensure and renewal so that the fees are sufficient but not excessive to cover expenses.

Purpose: The issue to be addressed is the need of the Board of Counseling to increase its fees to cover expenses for essential functions of review of applications, licensing, investigation of complaints against licensees, and adjudication and monitoring of disciplinary cases required for public health and safety in the Commonwealth.

Without adequate revenue to support licensing and discipline functions, applicants cannot be approved for licensure in a timely manner thus depriving the citizens of the Commonwealth with some of the mental health services that are needed. Additionally, if there is a substantial backlog of disciplinary cases, public health and safety may be at risk by allowing practitioners guilty of unprofessional conduct to

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continue in practice for several months awaiting a review and adjudication of an investigative report.

Substance: Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65. Application and initial licensure fees for the licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.

Issues: The primary advantage to the public is that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With a shortfall of \$339,084 projected in fiscal year 2021, there could be significant delays in licensing and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in renewal fees should not significantly impact the cost of counseling services for Virginians.

There are no disadvantages to the agency; the advantage is that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend its regulations to: 1) remove obsolete language on fee decreases that occurred in 2010 and 2) increase most fees for professional counselors, substance abuse counselors and substance abuse counseling assistants, rehabilitation providers, marriage and family therapist and substance abuse treatment practitioners who are governed by Board regulations.

Result of Analysis. Benefits outweigh costs for one proposed change. There is insufficient information to ascertain whether benefits will outweigh costs for other changes.

Estimated Economic Impact. In 2010, the Board promulgated a one-time fee reduction for its regulated entities because the Board had surplus revenues that were anticipated to exceed expenditures by greater than 10%. The Board now proposes to remove obsolete language for those fee reductions from the regulations for rehabilitation providers and substance abuse treatment practitioners. No one will incur costs on account of this proposed change. Removing this obsolete language will benefit individuals who read these regulations and might find that language confusing.

In addition to removing obsolete language from these regulations, the Board also proposes to raise most fees for professional counselors, substance abuse counselors and substance abuse counseling assistants, rehabilitation providers, marriage and family therapists and substance abuse treatment practitioners. The Board specifically proposes to raise renewal fees for the three professions it licenses from \$105 to \$130; renewal fees for the three professions that the Board certifies will

increase from \$55 to \$65. Other fees associated with these professions will also increase as described in the charts below.

Fees for licensure of professional counselors:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Annual Active License Renewal	\$105	\$130	23.8%
Annual Inactive License Renewal	\$55	\$65	18.18%
Initial Licensure by Examination	\$140	\$175	25%
Initial Licensure by Endorsement	\$140	\$175	25%
Registration of Supervision	\$50	\$65	30%
Adding or Changing Supervisor	\$25	\$30	20%
Duplicate License	\$5	\$10	100%
Verification of Licensure to Another Jurisdiction	\$25	\$30	20%
Late Renewal	\$35	\$45	28.57%
Reinstatement of a Lapsed License	\$165	\$200	21.21%
Replacement or Additional Wall Certificate	\$15	\$25	66.67%
Reinstatement after Revocation or Suspension	\$500	\$600	20%

Fees for certification of substance abuse counselors and substance abuse counseling assistants:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Substance Abuse Counselor Annual Renewal	\$55	\$65	18.18%

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Substance Abuse Counseling Assistant Annual Renewal	\$40	\$50	25%	Reinstatement of Lapsed Certificate	\$100	\$125	25%
Initial Certification by Examination	\$90	\$115	27.78%	Replacement or Additional Wall Certificate	\$15	\$25	66.67%
Initial Certification by Endorsement	\$90	\$115	27.78%	Reinstatement following Revocation or Suspension	\$500	\$600	20%
Registration of Supervision	\$50	\$65	30%	Fees for licensure of marriage and family therapists:			
Adding or Changing Supervisor	\$25	\$30	20%	FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Duplicate Certificate	\$5	\$10	100%	Annual Active License Renewal	\$105	\$130	23.8%
Late Renewal	\$20	\$25	25%	Annual Inactive License Renewal	\$55	\$65	18.18%
Reinstatement of a Lapsed Certificate	\$100	\$125	25%	Initial Licensure by Examination	\$140	\$175	25%
Replacement or Additional Wall Certificate	\$15	\$25	66.67%	Initial Licensure by Endorsement	\$140	\$175	25%
Reinstatement after Revocation or Suspension	\$500	\$600	20%	Registration of Supervision	\$50	\$65	30%
Fees for certification of rehabilitation providers:				Adding or Changing Supervisor	\$25	\$30	20%
FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE	Duplicate License	\$5	\$10	100%
Initial Certification by Examination	\$90	\$115	27.78%	Verification of Licensure to Another Jurisdiction	\$25	\$30	20%
Initial Certification by Endorsement	\$90	\$115	27.78%	Late Renewal	\$35	\$45	28.57%
Certification Renewal	\$55	\$65	18.18%	Reinstatement of a Lapsed License	\$165	\$200	21.21%
Duplicate Certificate	\$5	\$10	100%	Replacement or Additional Wall Certificate	\$15	\$25	66.67%
Late Renewal	\$20	\$25	25%	Reinstatement after Revocation or Suspension	\$500	\$600	20%

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One Time 2010 Reduction for Renewal of an Active License	\$52	obsolete	N/A	One Time 2010 Reduction for Renewal of an Active License	\$52	obsolete	N/A
One Time 2010 Reduction for Renewal of an Inactive License	\$27	obsolete	N/A	One Time 2010 Reduction for Renewal of an Inactive License	\$27	obsolete	N/A

Fees for licensure of substance abuse treatment practitioners:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Annual Active License Renewal	\$105	\$130	23.8%
Annual Inactive License Renewal	\$55	\$65	18.18%
Initial Licensure by Examination	\$140	\$175	25%
Initial Licensure by Endorsement	\$140	\$175	25%
Registration of Supervision	\$50	\$65	30%
Adding or Changing Supervisor	\$25	\$30	20%
Duplicate License	\$5	\$10	100%
Verification of Licensure to Another Jurisdiction	\$25	\$30	20%
Late Renewal	\$35	\$45	28.57%
Reinstatement of a Lapsed License	\$165	\$200	21.21%
Replacement or Additional Wall Certificate	\$15	\$25	66.67%
Reinstatement after Revocation or Suspension	\$500	\$600	20%

The Board proposes to raise these fees because current fee levels are forecasted to be inadequate to support Board activities by fiscal year 2021 (with current fees, the Board is projected to run a deficit of \$339,084 in that year). These proposed fee increases will allow the Board to maintain licensing and disciplinary functions going into the future. Individuals licensed through the Board's regulations will incur costs equal to the fee increases they will be responsible for. Any increase in costs for entering or remaining in a profession can be expected to decrease the number of individuals choosing to do so (as their costs for continuing to work in the subject field would be increasing relative to other employment options). These fee increases, however, are relatively small and so would be unlikely to affect the employment decisions of most of the Board's licensees and certificate holders. To the extent that these regulatory programs are necessary to protect the health and safety of the citizens of Virginia, those citizens will benefit from fee increase to fund additional DHP staff positions to support the licensing and disciplinary functions of the Board.

Businesses and Entities Affected. Board staff reports that the Board currently licenses 4,383 professional counselors, 847 marriage and family therapists and 176 substance abuse treatment practitioners. The Board also certifies 1,685 substance abuse counselors, 170 substance abuse counseling assistants and 250 rehabilitation providers. All of these individuals, as well as any individuals who choose to seek licensure or certification in the future, will be affected by these proposed regulations. Board staff reports that certified substance abuse counselors and substance abuse counseling assistants work for employers such as government agencies and health care systems but many individuals in the other licensed or certified groups are likely independent practitioners who would qualify as small businesses.

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

Projected Impact on Employment. Raising licensure and certification fees may cause some individuals who are licensed or certified to leave their professions. As these fee increases are small, that effect would likely be negligible in this instance.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Small business licensees and certificate holders will incur costs equal to the proposed increase in fees in their professions.

Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would both meet the Board's goal of increasing staff to meet workload needs and further minimize adverse impacts for regulated entities.

Adverse Impacts:

Businesses. Licensees and certificate holders who practice independently will incur costs on account of this proposed regulation that are equal to the fee increases in their professions.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities. Individual licensees and certificate holders who are employed by other entities will incur costs on account of this proposed regulation that are equal to the fee increases in their professions.

Agency's Response to Economic Impact Analysis: The Board of Counseling does not concur with the analysis of the Department of Planning and Budget on proposed amended regulations for fee increases. On page 6 of the analysis, it is stated that: "The Board proposes to raise these fees to fund their part of the six positions that were recently approved for the Department of Health Professions." In fact, the department's request for additional full-time positions was made in December of 2015, and members of the board received a letter from the director in May of 2015 advising them of the need to increase fees. There was no contemplation of any additional positions at the time the board adopted a Notice of Intended Regulatory Action in September of 2015. The need to increase fees was related to the budget and projected revenues and expenditures at the end of the 2014-2016 biennium.

The one new position approved for the Board of Counseling in the department's next budget is a replacement for a temporary employee who has been with the board since 2011. Therefore, there will be some additional costs associated with converting a temporary position to a full-time employee, but those costs are unrelated to the action taken to increase fees to

cover expenditures as mandated by § 54.1-113 of the Code of Virginia.

The board further disagrees with the statements that "any increase in costs for entering or remaining in a profession can be expected to decrease the number of individuals choosing to do so" and "raising licensure and certification fees may cause some individuals who are licensed or certified to leave their professions." An increase of \$25 in annual renewal costs for a licensed profession (less than one family dinner at a fast-food restaurant) is unlikely to affect anyone's decision to remain in that profession. An increase of \$10 for certified professions is also not likely to cause someone to leave. Likewise, a \$35 increase in application costs for a licensed profession is unlikely to decrease the number of individuals choosing to enter the profession.

The analysis also failed to note that the board has not had a fee increase in over 15 years and has, in fact, reduced renewal fees four times during that period. Therefore, the licensure and certification costs under the Board of Counseling have been kept well below all other costs related to entering or maintaining these professions in the last 15 years.

Summary:

The proposed amendments (i) increase renewal fees for licensed professional counselors, marriage and family therapists, and substance abuse professionals (licensed professions) from \$105 to \$130 and for certified substance abuse counselors and rehabilitation providers (certified professions) from \$55 to \$65; (ii) increase application and initial licensure fees for the licensed professions from \$140 to \$175 and for the certified professions from \$90 to \$115; and (iii) increase all other fees by approximately 25%.

18VAC115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

Active annual license renewal	\$105 <u>\$130</u>
Inactive annual license renewal	\$55 <u>\$65</u>
Initial licensure by examination: Application processing and initial licensure	\$140 <u>\$175</u>
Initial licensure by endorsement: Application processing and initial licensure	\$140 <u>\$175</u>
Registration of supervision	\$50 <u>\$65</u>
Add or change supervisor	\$25 <u>\$30</u>
Duplicate license	\$5 <u>\$10</u>
Verification of licensure to another jurisdiction	\$25 <u>\$30</u>
Late renewal	\$35 <u>\$45</u>

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Reinstatement of a lapsed license	\$165 <u>\$200</u>
Replacement of or additional wall certificate	\$15 <u>\$25</u>
Returned check	\$35
Reinstatement following revocation or suspension	\$500 <u>\$600</u>

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55 <u>\$65</u>
Substance abuse counseling assistant annual certification renewal	\$40 <u>\$50</u>
Substance abuse counselor initial certification by examination:	\$90 <u>\$115</u>
Application processing and initial certification	
Substance abuse counseling assistant initial certification by examination:	\$90 <u>\$115</u>
Application processing and initial certification	
Initial certification by endorsement of substance abuse counselors:	\$90 <u>\$115</u>
Application processing and initial certification	
Registration of supervision	\$50 <u>\$65</u>
Add or change supervisor	\$25 <u>\$30</u>
Duplicate certificate	\$5 <u>\$10</u>
Late renewal	\$20 <u>\$25</u>
Reinstatement of a lapsed certificate	\$100 <u>\$125</u>
Replacement of or additional wall certificate	\$15 <u>\$25</u>
Returned check	\$35
Reinstatement following revocation or suspension	\$500 <u>\$600</u>

B. All fees are nonrefundable.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination: Processing and initial certification	\$90 <u>\$115</u>
Initial certification by endorsement: Processing and initial certification	\$90 <u>\$115</u>
Certification renewal	\$55 <u>\$65</u>
Duplicate certificate	\$5 <u>\$10</u>
Late renewal	\$20 <u>\$25</u>
Reinstatement of a lapsed certificate	\$100 <u>\$125</u>
Replacement of or additional wall certificate	\$15 <u>\$25</u>
Returned check	\$35
Reinstatement following revocation or suspension	\$500 <u>\$600</u>

B. Fees shall be paid to the board. All fees are nonrefundable.

18VAC115-50-20. Fees.

A. The board has established fees for the following:

Registration of supervision	\$50 <u>\$65</u>
Add or change supervisor	\$25 <u>\$30</u>
Initial licensure by examination: Processing and initial licensure	\$140 <u>\$175</u>
Initial licensure by endorsement: Processing and initial licensure	\$140 <u>\$175</u>
Active annual license renewal	\$405 <u>\$130</u>
Inactive annual license renewal	\$55 <u>\$65</u>
Penalty for late renewal	\$35 <u>\$45</u>
Reinstatement of a lapsed license	\$165 <u>\$200</u>
Verification of license to another jurisdiction	\$25 <u>\$30</u>
Additional or replacement licenses	\$5 <u>\$10</u>
Additional or replacement wall certificates	\$15 <u>\$25</u>
Returned check	\$35
Reinstatement following revocation or suspension	\$500 <u>\$600</u>
One-time reduction for renewal of an active license due on June 30, 2010	\$52
One-time reduction for renewal of an inactive license due on June 30, 2010	\$27

B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner:

Registration of supervision (initial)	\$50 \$65
Add/change supervisor	\$25 \$30
Initial licensure by examination: Processing and initial licensure	\$140 \$175
Initial licensure by endorsement: Processing and initial licensure	\$140 \$175
Active annual license renewal	\$105 \$130
Inactive annual license renewal	\$55 \$65
Duplicate license	\$5 \$10
Verification of license to another jurisdiction	\$25 \$30
Late renewal	\$35 \$45
Reinstatement of a lapsed license	\$165 \$200
Replacement of or additional wall certificate	\$15 \$25
Returned check	\$35
Reinstatement following revocation or suspension	\$500 \$600
One-time reduction for renewal of an active license due on June 30, 2010	\$52
One-time reduction for renewal of an inactive license due on June 30, 2010	\$27

B. ~~Fees shall be paid directly to the board or its contractor, or both, in appropriate amounts as specified in the application instructions.~~ All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

VA.R. Doc. No. R16-4525; Filed August 1, 2016, 12:30 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-10, 22VAC40-72-60, 22VAC40-72-390; adding 22VAC40-72-57).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Date: November 15, 2016.

Agency Contact: Judith McGreal, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7157, or email judith.mcgreal@dss.virginia.gov.

Summary:

Pursuant to Chapter 320 of the 2013 Acts of Assembly, the amendments establish for purposes of disclosure only a minimum amount of liability insurance coverage of \$500,000 per occurrence and \$500,000 aggregate to be maintained by an assisted living facility (ALF). It does not require an ALF to maintain coverage, but rather to disclose to residents, prospective residents, and legal representatives, if any, whether the facility has the minimum required amount as established by the State Board of Social Services. The amendments also include (i) changes to the disclosure statement and the resident agreement to include whether the ALF maintains at least \$500,000 per occurrence and \$500,000 aggregate of liability insurance coverage and (ii) definition updates to reflect current terminology.

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

22VAC40-72-10. Definitions.

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

"Activities of daily living—(ADLs)" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-

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2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, [~~mental retardation~~ developmental], and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation-~~(CPR)~~ or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or [~~mental retardation~~, intellectual disability and] that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Community services board" or "CSB" means a [~~citizens' board~~ public body] established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, [~~mental retardation~~ developmental], and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging and Rehabilitative Services as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the State Department of Social Services.

"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ~~ingredient(s)~~ ingredient or ingredients, (i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of

the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of another person and take medication without requiring the assistance of another person.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan—~~(ISP)~~ or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living—~~(IADLs)~~ or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in

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performing these activities is a part of determining appropriate level of care and services.

["Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.]

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.

A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.

For any given standard, the term legal representative applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist.

Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-72-220 and 22VAC40-72-230.

"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the State Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and
7. Any law-enforcement officer.

This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide as provided in 22VAC40-72-660.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

["~~Mental retardation~~" means ~~disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as~~

~~demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.]~~

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the ~~United States~~ U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if

referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" below.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (viii) any other person deemed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

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"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope and practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Staff or staff person also includes those individuals hired through a contract to provide services for the facility.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Uniform assessment instrument (~~UAI~~)" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

[22VAC40-72-57. Minimum amount for liability insurance disclosure.

A. The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-72-60 and the resident agreement required by 22VAC40-72-390 is as follows:

1. \$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and

2. \$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.

B. No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.]

22VAC40-72-60. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;
2. Be provided to the prospective resident and his legal representative at least five days in advance of the planned admission date, and prior to signing an admission agreement or contract;

EXCEPTION: If circumstances are such that resident admission to a facility prevents disclosure of the information at least five days in advance, then the information shall be disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.

3. Be provided to a resident or his legal representative upon request; and
4. Disclose the following information, which shall be kept current:
 - a. Name of the facility;
 - b. Name of the licensee;
 - c. Names of any other assisted living facilities for which the licensee has a current license issued by the Commonwealth of Virginia;
 - d. Ownership structure of the facility; (i.e., individual, partnership, corporation, limited liability company, unincorporated association or public agency);
 - e. Name of management company that operates the facility, if other than the licensee;
 - f. Licensed capacity of the facility and description of the characteristics of the resident population;
 - g. Description of all accommodations, services, and care that the facility offers;
 - h. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and any fees for additional accommodations, services, and care;
 - i. Policy regarding increases in charges and length of time for advance notice of intent to increase charges;

j. Amount of an advance or deposit payment and refund policy for such payment;

k. Criteria for admission to the facility and any restrictions on admission;

l. Criteria for transfer to a different living area within the same facility, including transfer to another level, gradation, or type of care within the same facility or complex;

m. Criteria for discharge, including the actions, circumstances, or conditions that would result or may result in the resident's discharge from the facility;

n. Requirements or rules regarding resident conduct and other restrictions and special conditions;

o. Range, categories, frequency, and number of activities provided for residents;

p. General number, functions, and qualifications of staff on each shift;

q. Whether [or not] the facility maintains liability insurance that provides at least [a the] minimum amount of coverage established by the board for disclosure purposes [of \$500,000 per occurrence and \$500,000 aggregate set forth in 22VAC40-72-57] to compensate residents or other individuals for injuries and losses from negligent acts of the facility [. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-72-57];

~~r.~~ r. Notification that names of contractors providing essential services to residents are available upon request; and

~~s.~~ s. Address of the website of the department, with a note that additional information about the facility may be obtained from the website, including type of license, special services, and compliance history that includes information after July 1, 2003.

B. If a prospective resident is admitted to the facility, written ~~acknowledgement~~ acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in his record.

C. The information required in this section shall also be available to the general public.

22VAC40-72-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care that specifies:
 - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

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- b. Description of all accommodations, services, and care that the facility offers and any related charges;
- c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;
- d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
- e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and
- f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

~~[2. Statement that specifies whether the facility maintains liability insurance that provides at least a minimum amount of coverage established by the board, for disclosure purposes, of \$500,000 per occurrence and \$500,000 aggregate to compensate residents or other individuals for injuries and losses from negligent acts of the facility.]~~

~~[2. ~~3.~~] Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his legal representative.~~

~~[3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.]~~

~~3- 4. Acknowledgment that the resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.~~

~~4- 5. Acknowledgment that the resident has been informed [of the policy required by 22VAC40-72-840 J regarding weapons. that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council as described in 22VAC40-72-810.]~~

~~5- 6. [Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility. Acknowledgment that the resident has been notified in writing whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-72-57 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-72-57. The written notification must be on a form developed by the department.]~~

~~6- 7. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed a copy of § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.~~

~~7- 8. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.~~

~~8- 9. [Acknowledgment that the resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council. (See 22VAC40-72-810.)~~

~~Acknowledgment that the resident has been informed of the policy required by 22VAC40-72-840 J regarding weapons.]~~

~~9- 10. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy.~~

~~10- 11. Acknowledgment that the resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-72-800.~~

~~11- 12. Acknowledgment that the resident has been informed of the policy regarding the administration and storage of medications and dietary supplements.~~

~~12- 13. Acknowledgment that the resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-72-340 D.~~

B. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement shall be updated whenever there are changes in financial arrangements, accommodations, services, care provided by the facility, or requirements governing the resident's conduct, ~~or liability insurance [statement disclosure notification]~~, and signed by the licensee or administrator and the resident or his legal representative. If the original agreement provides for specific changes in any of these items, this standard does not apply to those changes.

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 (22VAC40-72)

~~Initial Application for a State License to Operate an Assisted Living Facility, 032-05-009/4 (rev. 9/02).~~

~~Renewal Application for a State License to Operate an Assisted Living Facility, 032-05-025/4 (rev. 9/02).~~

[Assisted Living Facility Disclosure Statement \(rev. 4/2016\)](#)

[Assisted Living Facility Liability Insurance Disclosure Notification \(eff. 4/2016\)](#)]

VA.R. Doc. No. R14-3906; Filed August 1, 2016, 3:33 p.m.

GENERAL NOTICES/ERRATA

COMMONWEALTH TRANSPORTATION BOARD Solicitation of Public Comment Concerning Mobile Food Vending in Virginia Department of Transportation-owned Commuter Parking Lots in Northern Virginia

As part of its efforts to comply with Chapter 765 of the 2016 Acts of Assembly, the Virginia Department of Transportation (VDOT) plans to propose to the Commonwealth Transportation Board amendments to the Rules and Regulations for the Administration of Parking Lots and Environs (24VAC30-100) and the Land Use Permit Regulations (24VAC30-151) concerning mobile food vending in VDOT-owned commuter parking lots in Planning District 8, which comprises the following counties: Fairfax, Loudoun, and Prince William.

The Land Use Permit Regulations (24VAC30-151) were amended in 2015 to allow food vendors to sell items on state highway right-of-ways as directed by Chapter 466 of the 2015 Acts of Assembly. Chapter 765 directs VDOT to develop guidelines, consistent with the board's regulations and policies, to permit mobile food vending in commuter parking lots owned by VDOT and to vend to commuters. Additionally, any necessary regulatory changes are to be exempt from the Administrative Process Act. VDOT is seeking input from localities and other stakeholders during the process of amending the regulations.

The public comment period will close at 5 p.m. on September 4, 2016. Anyone wishing to submit comments may do so by mail, email, or fax to the contact person listed below.

Contact Information: Robert W. Hofrichter, Land Use Director, Office of Land Use, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, FAX (804) 225-4785, or email robert.hofrichter@vdot.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

August 1, 2016

Administrative Letter 2016-08

To: All Property and Casualty Insurance Companies Licensed in Virginia and Rate Service Organizations Licensed in Virginia

Re: Amendments to § 38.2-231 of the Code of Virginia; Withdrawal of Administrative Letter 2006-12

Chapter 4 of the 2016 Acts of the Assembly (House Bill 31) became effective immediately upon Governor McAuliffe's signature on February 23, 2016. House Bill 31 amends and reenacts a number of sections within Title § 38.2 of the Code of Virginia relating to notices required in certain insurance

policies. This letter summarizes changes resulting from this legislation that insurers should take note of, and provides clarification and guidance, particularly with respect to the circumstances under which certain notices must be provided, and the methods by which insurers may verify proof of mailing of the notices. This letter replaces Administrative Letter 2006-12, which is hereby withdrawn.

House Bill 31 modifies the provisions of Virginia Code §§ 38.2-231, 38.2-2113, and 38.2-2208 by restoring an insurer's ability to use a certificate of mailing from the United States Postal Service (USPS) to demonstrate that a notice was mailed to the insured or lienholder, often referred to as "proof of mailing." These statutes apply to notices of cancellation or refusals to renew a policy, and, for policies subject to the provisions of § 38.2-231, to the notice of a premium increase greater than 25 percent, and notice of a reduction in coverage (collectively, "notice"). Bulk mailing is not a recognized proof of mailing method.

House Bill 31 also clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records for sending notices for one year, regardless of the method used. For more information regarding IMb Tracing™, please see the guidance document on the P&C Company webpage: [Guidance—Using IMb Tracing™ as Proof of Mailing](#).

Issues on which the Bureau Most Frequently Receives Inquiries

Insurer-Initiated Increases in Premium that Trigger a Notice to the Insured

Subsection M of § 38.2-231 defines an insurer-initiated increase in premium as an increase in premium other than one resulting from changes in (i) coverage requested by the insured; (ii) policy limits requested by the insured; (iii) the insured's operation or location that result in a change in the classification of the risk; or (iv) the rating exposures including, but not limited to, increases in payroll, receipts, square footage, number of automobiles insured, or number of employees.

Examples of an insurer-initiated increase include an increase in the filed rates; changes in experience or schedule rating resulting in an increase in premium; and, for claims-made policies, annual premium increases until the risk reaches a mature claims-made status.

To determine whether a notice is required, the insurer must first compare the renewal premium to the premium charged by the insurer at the effective date of the expiring policy. If the renewal premium has increased more than 25%, the insurer then must determine if its own actions have generated a premium increase greater than 25%. The insurer is only

required to send notice when its own actions have caused the premium to increase more than 25%.

Section 38.2-231 states that the notice must either contain the specific reason for the increase or advise the insured of the specific reason for the increase and that the amount of the increase may be obtained from the agent or the insurer.

Effect of Failing to Provide a Notice of Insurer-Initiated Increase in Premium or Reduction in Coverage

Subsection D of § 38.2-231 sets forth the procedures that an insurer must follow when proper notice of an increase in premium or reduction in coverage was not given. If proper notice is not given, the policy remains in effect for 45 days after written notice is mailed or delivered to the insured, unless the insured obtains replacement coverage or elects to cancel sooner. In either case, coverage under the prior policy ceases on the effective date of the replacement coverage or the elected date of cancellation. If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond the expiration date will be under the prior policy's rates, terms, and conditions as applied against the renewal policy's limits, rating exposures, and coverages.

Circumstances where Notice of Insurer-Initiated Increase in Premium or Reduction in Coverage Is Not Needed

Subsection E of § 38.2-231 provides that the notice is not required if:

- the insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date or, in the case of medical malpractice insurance, not less than 90 days prior to the effective date of the policy;
- the policy is issued to a large commercial risk as defined in subsection C of § 38.2-1903.1 (except that policies of medical malpractice insurance are not exempt from the notice requirement); or
- the policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the insured's actual loss experience.

Policies to which Section 38.2-231 Applies

Section 38.2-231 applies to all policies of insurance as defined in §§ 38.2-117 and 38.2-118 that insure a business entity, or policies of insurance that include in part insurance as defined in §§ 38.2-117 or 38.2-118 insuring a business entity. Section 38.2-231 also applies to policies of insurance as defined in § 38.2-124 insuring a business entity and to policies of insurance as defined in subsection B of § 38.2-111 insuring a business entity. Such policies include, but are not limited to, commercial automobile liability, commercial package policies (that include liability coverage), commercial general liability, professional liability, commercial umbrella, directors' and

officers' liability, errors and omissions, employment related practices liability, pollution liability, gap insurance, and tuition refund policies.

(Please note that even if a line of insurance is exempt from rate filing requirements, the premium notice requirements still apply.)

Policies to which § 38.2-231 Does Not Apply

Section 38.2-231 does not apply to personal lines policies that have business exposures endorsed on them. For example, homeowners and private passenger automobile policies that cover some business exposure of the insured are governed by the termination provisions set forth in §§ 38.2-2114 and 38.2-2212, respectively.

The definition of a "policy of motor vehicle insurance" in subsection H of § 38.2-231 excludes policies issued through the Virginia Automobile Insurance Plan. Please refer to this subsection for additional exemptions.

Specific Reason for Cancelling, Refusing to Renew, Initiating an Increase in Premium or Reduction in Coverage

The insurer is required by § 38.2-231 to provide a specific reason for the cancellation, refusal to renew, insurer-initiated increase in premium or reduction in coverage that is clear enough for the insured to understand why the policy is being cancelled or non-renewed. The following examples are not considered specific reasons: "loss history," "driving records," "claims," "prohibited risk," "underwriting reason," "loss history unacceptable," "engineering report," "inspection report," or "loss ratio exceeds acceptable margin."

Insurer Responsibilities When Moving Insureds from One Company to Another in a Group

A non-renewal notice is required even when coverage is being offered by another insurer within the same group of insurers unless the affiliated insurer offers to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy and the affiliated insurer's policy has the types and limits of coverage at least equal to those on the expiring policy. See § 38.2-231 A 3.

If you have any questions regarding this administrative letter, please contact Manager, Property & Casualty Consumer Services Section, telephone (804) 371-9185, or email bureauofinsurance@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Comment on the Civil Enforcement Manual

Purpose of notice: To announce an opportunity for public comment on the Department of Environmental Quality's Civil Enforcement Manual.

General Notices/Errata

Public comment period: August 22, 2016, through September 21, 2016.

Topic of public comment: The Department of Environmental Quality (DEQ) is providing an opportunity for the public to comment on draft, revised guidance used in its enforcement program. The draft, revised guidance addresses the procedures that DEQ staff use to resolve and prioritize alleged violations of environmental requirements and how to calculate appropriate civil charges/civil penalties in administrative enforcement actions for DEQ's Air Stationary Source Program, Land Protection and Remediation Programs, and Water Programs. Once final, the draft, revised guidance will supersede the current Chapters 2 through 4 of the DEQ Civil Enforcement Manual (Virginia Regulatory Town Hall ID: [CEM-03](#), [CEM-04](#), [CEM-06](#), [CEM-07](#), [CEM-07A](#), and [CEM-07B](#)Memo). The draft text can be found at <http://www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx>.

Comments may be emailed to the agency contact listed below.

Contact Information: Lee Crowell, Hearing and Legal Services Officer, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4450, or email lee.crowell@deq.virginia.gov.

**STATE BOARD OF HEALTH AND
DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

**Proposed Notice of No Need for Certificate of Public
Need Applications for Development of Additional
Nursing Home Beds**

Legal Notice of Request for Certificate of Public Need Applications.

Pursuant to the requirements of § 32.1-102.3:2 of the Code of Virginia notice is hereby given of consideration of the need to issue a request for applications (RFA) for the development of

additional nursing home beds in Virginia. This notice reviews the qualification of Virginia's 22 health planning districts for the authorization of additional nursing home beds pursuant to applicable law and regulation (12VAC5-230).

Evaluation of Need for Additional Nursing Home Beds.

The Nursing Home Services component of the State Medical Facilities Plan (12VAC5-230) contains a nursing home bed-need forecasting method (12VAC5-230-610). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2019 in each of Virginia's 22 health planning districts.¹

Consistent with 12VAC5-230-610 A of the State Medical Facilities Plan (SMFP), no planning district is considered to have a need for additional nursing home beds unless the average annual occupancy of all existing nonfederal, Medicaid-certified nursing home beds in the planning district was at least 93% for the most recent year for which bed utilization has been reported to the Virginia Department of Health (through nursing home filings with Virginia Health Information, Inc.).² For purposes of this document, 2014 is the most recent year of nursing home utilization data reported to Virginia Health Information.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds that were authorized for the planning district within the last three years and that will be Medicaid-certified beds. The following table displays, by planning district, the nursing home gross bed need forecast for 2019, the current licensed bed inventory and authorized additions of nursing home beds, and the net bed need forecast for 2019.

The table also shows the average annual percent occupancy of Medicaid-certified nursing home beds for each planning district for the 2014 reporting year and identifies the status of each planning district with respect to authorized but uncompleted nursing home beds. The final column of the table states whether the planning district qualifies for additional nursing home beds for the 2019 planning year.

Nursing Home Bed Need Forecast and
Whether a Planning District Qualifies for Additional Nursing Home Beds
for the 2019 Planning Year

Planning District	Bed Need Forecast for 2019	Existing and Authorized Beds	Projected Net Bed Need in 2019	Average Occupancy of Medicaid Beds 2014	Authorized but Uncompleted Medicaid Beds	Planning District Qualifies for Additional Nursing Home Beds
1	571	631	(60)	88.4%	no	no--no need
2	522	529	(7)	81.4%	no	no--no need
3	1,354	1,525	(171)	90.5%	no	no--no need
4	762	788	(26)	85.6%	no	no--no need

5	2,096	2,285	(189)	89.6%	no	no--no need
6	1,522	1,536	(14)	91.0%	yes	no--no need
7	939	992	(53)	91.4%	no	no--no need
8	4,182	4,439	(257)	88.0%	yes	no--no need
9	718	766	(48)	86.1%	no	no--no need
10	1,008	1,037	(29)	90.1%	no	no--no need
11	1,416	1,596	(180)	85.1%	no	no--no need
12	1,922	1,929	(7)	90.7%	no	no--no need
13	809	862	(53)	87.4%	no	no--no need
14	551	670	(119)	85.0%	no	no--no need
15	3,970	4,035	(65)	90.4%	no	no--no need
16	824	785	39	84.8%	no	no--low occu.
17	261	308	(47)	87.5%	no	no--no need
18	517	540	(23)	88.4%	no	no--no need
19	937	1,055	(118)	89.0%	no	no--no need
20	4,116	4,330	(214)	87.8%	no	no--no need
21	1,796	1,728	68	90.1%	no	no--low occu.
22	315	376	(61)	87.4%	no	no--no need

Sources:

- Virginia State Medical Facilities Plan (12VAC5-230)
- University of Virginia Weldon Cooper Center for Public Service (population projections, 2012 edition)
- 2014 Virginia Nursing Home Patient-Origin Survey, VDH Office of Licensure and Certification (for age-specific nursing home use rates)

VDH Office of Licensure and Certification (for bed inventory).

Conclusion.

The Request for Applications for nursing home beds issued in 2016 is hereby issued as a notice that no need exists for new nursing home beds. As shown in the preceding table, no planning district is identified by the standards of the SMFP as having a forecasted need for nursing home beds by 2019. No planning district in the Commonwealth currently meets the three-part test for qualification by:

- 1) Having a positive formula-generated need projection;
- 2) Having an average annual occupancy percentage of Medicaid-certified beds for the most recent reporting year of 93% or higher; and
- 3) Having no uncompleted nursing home beds authorized within the last three years that will be Medicaid-certified.

Any person objecting to this notice may notify the State Health Commissioner and the State Board of Health within 14 days of publication of this notice in the Virginia Register. Any objections received will be considered and replied to before a final notice is published.

Contact Information: Domica Winstead, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2107, or email domica.winstead@vdh.virginia.gov.

¹ For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than the current combined Planning District 23, Hampton Roads.

² The Veterans Care Centers are excluded by regulation from consideration in the determination of nursing home bed need.

General Notices/Errata

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on August 3, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Ninety-Nine (16)

Virginia Lottery's "Special Events Print 'n Play Promotion" Final Rules for Operation (this Director's Order becomes effective on July 25, 2016, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred (16)

Virginia Lottery's "Premium Registration Coupon Promotion" Final Rules for Operation (this Director's Order becomes effective nunc pro tunc to July 18, 2016, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred One (16)

Virginia Lottery's Scratch Game 1701 "Thrills, Chills & \$50 Bills" Final Rules for Game Operation (effective July 19, 2016)

Director's Order Number One Hundred Four (16)

Virginia Lottery's Scratch Game 1634 "Double Shot Crossword" Final Rules for Game Operation (effective July 5, 2016)

Director's Order Number One Hundred Five (16)

Virginia Lottery's Scratch Game 1677 "Gold Coin Crossword" Final Rules for Game Operation (effective July 20, 2016)

Director's Order Number One Hundred Six (16)

Virginia Lottery's Scratch Game 1668 "Super Triple 777" Final Rules for Game Operation (effective July 20, 2016)

Director's Order Number One Hundred Seven (16)

Virginia Lottery's Scratch Game 1697 "100X the Money" Final Rules for Game Operation (effective August 2, 2016)

Director's Order Number One Hundred Eight (16)

Virginia Lottery's Scratch Game 1707 "\$15 Million Payout" Final Rules for Game Operation (effective August 2, 2016)

Director's Order Number One Hundred Nine (16)

Virginia Lottery's Scratch Game 1715 "5X the Money" Final Rules for Game Operation (effective August 2, 2016)

Director's Order Number One Hundred Ten (16)

Virginia Lottery's Scratch Game 1712 "Turkey Payout" Final Rules for Game Operation (effective August 2, 2016)

Director's Order Number One Hundred Eleven (16)

Virginia Lottery's Vegas VIP Promotion Final Rules for Operation (this Director's Order becomes effective on September 13, 2016, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Rate Increase for Case Management for Individuals with Developmental Disabilities - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to increase the rate paid for case management services for individuals with developmental disabilities. This change will be reflected in an update to the *Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)*.

This notice is not required by 42 CFR § 447.205 and § 1902(a)(13) of the *Social Security Act*, 42 USC § 1396a(a)(13), but is nevertheless designed to meet those requirements. A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at william.lessard@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed increase in the case management rate for individuals with developmental disabilities and on any effect on beneficiary access to care. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address. Comments may also be submitted, in writing, and are available for review on the Virginia Regulatory Town Hall public comment forum for this notice.

This notice is available for public review on the Virginia Regulatory Town Hall (<http://townhall.virginia.gov>), on the General Notices page, found at <http://townhall.virginia.gov/L/generalnotice.cfm>.

DMAS is clarifying that it is not changing its methods and standards for setting payment rates. However, in order to comply with the legislative mandates set forth in Item 306 of Chapter 780 of the 2016 Acts of Assembly, DMAS is posting

this notice of its intent to increase the rate paid for case management services for individuals with developmental disabilities.

Reimbursement Changes Affecting Other Providers (12VAC30-80)

12VAC30-80-110 is being amended to remove the reference to rates that were established in September 2013, as DMAS plans to increase the rates for case management services for individuals with developmental disabilities by 38%. The rate increase will be effective July 1, 2016.

The expected annual increase in expenditures for the rate increase is \$964,211.81.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-160, Construction Industry Standard for Sanitation**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 20, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continuing need for this regulation because Virginia employers and employees engaged in construction activities still need access to potable toilet facilities and handwashing facilities, which are in a clean and sanitary condition (in accordance with appropriate public health sanitation practices) without cost to the employees. The potable drinking water must be suitably cool and in sufficient amounts so that it is not completely consumed during the workday. Toilet and handwashing facilities shall be provided, and toilets shall be adequately ventilated with self-closing doors that can be closed and latched from inside to ensure privacy.

No comments were received on this regulation during the public comment period which began on May 23, 2016, and concluded on June 14, 2016.

This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the date when this regulation became effective, technology, economic conditions, and other factors have not changed in the area affected by the regulation.

As a result of this periodic review, the agency has determined that this regulation has no negative economic impact on small businesses. Consistent with the stated objectives of applicable law, the Department of Labor and Industry and the Safety and Health Codes Board have concluded that this regulation should be retained with no changes.

Contact Information: Regina P. Cobb, Senior Management Analyst, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email regina.cobb@doli.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-180, Virginia Field Sanitation Standard, Agriculture**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 20, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation to protect the public health, safety, and welfare of Virginia agricultural workers by providing them with potable drinking water and sanitary facilities.

The agency and the Safety and Health Codes Board have no knowledge of any complaints from the public concerning the regulation. No public comments were received on this regulation during the public comment period which began on May 23, 2016, and concluded on June 14, 2016.

The regulation is not overly complex, and does not overlap, duplicate or conflict with federal or state law or regulation.

This regulation was last evaluated by means of a periodic review in 2009, and there are no known factors that have changed in the area affected by the regulation.

As a result of this periodic review, the agency has determined that this regulation has no negative economic impact on small businesses. Consistent with the stated objectives of applicable law, the Department of Labor and Industry and the Safety and Health Codes Board have concluded that this regulation should be retained without changes.

Contact Information: Regina P. Cobb, Senior Management Analyst, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email regina.cobb@doli.virginia.gov.

General Notices/Errata

DEPARTMENT OF TAXATION

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 Taxation is conducting a periodic review and small business impact review of **23VAC10-370, Cigarette Tax Regulations**.

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 September 5, 2016, and ends September 26, 2016.

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 Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Milton F. Wright Trucking, Inc.

An enforcement action has been proposed for Milton F. Wright Trucking, Inc. for violations at the Claremont Farm, the Cather Farm, and the Maslaney Farm in Berryville, Virginia. The State Water Control Board proposes to issue a consent order to Milton F. Wright Trucking, Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Karen Hensley will accept comments by email at karen.hensley@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from August 22, 2016, to September 21, 2016.

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

DEPARTMENT OF STATE POLICE

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Regulations.**

Publication: 32:24 VA.R. 3317-3389 July 25, 2016

Corrections to Final Regulation:

Page 3345, 19VAC30-70-140 A 7, line 4, after "subsection" strike "F" and insert "E"

Page 3347, 19VAC30-70-140 D, beginning of line 5, strike "subdivision 1 of"

Page 3353, 19VAC30-70-180, subdivision 10, line 2, after "9," insert "11," and after "and" strike "10" and insert "12"

Page 3355, 19VAC30-70-200 C 1, line 2, after "with" strike "subdivision 1" and insert "subsection A"

Page 3365, 19VAC30-70-440 D 4 c, line 3, after "subdivision" strike "a below" and insert "D 4 c (1) of this section"

Page 3371, 19VAC30-70-470, subdivision 15, c NOTE, line 2, after "in" strike "above referred to section" and insert "Figures 1 through 4"

Page 3383, 19VAC30-70-550, subdivision 8, NOTE, line 2, after "7," insert "and" and after "9" strike "and 10"

VA.R. Doc. No. R16-4533; Filed August 11, 2016, 1:55 p.m.