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Virginia Code Commission

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

January 2017 through February 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT STATE WATER CONTROL BOARD

Agency Decision

Title of Regulation: 9VAC25-260. Water Quality Standards.

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

Name of Petitioner: McChesney Goodall, IV.

Nature of Petitioner's Request: Designate a segment of Laurel Fork in Highland County, the majority of which is within the property boundary of Rifle Ridge Farm, LP, as Exceptional State Waters.

Agency Decision: Request granted.

Statement of Reason for Decision: The State Water Control Board, at its meeting on December 12, 2016, authorized the Department of Environmental Quality to initiate a rulemaking to consider amending the Water Quality Standards regulation (9VAC25-260-30 A 3) to designate the petitioned segment of Laurel Fork as exceptional state waters. A Notice of Intended Regulatory Action will be submitted early in 2017.

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

VA.R. Doc. No. R17-04; Filed December 16, 2016, 1:45 p.m.

comment will be requested until February 8, 2017. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting scheduled for February 21, 2017, and the petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: February 8, 2017.

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

VA.R. Doc. No. R17-08; Filed December 13, 2016, 3:14 p.m.

◆ ————— ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD OF PHYSICAL THERAPY

Initial Agency Notice

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

Statutory Authority: §§ 54.1-2400 and 54.1-3473 through 54.1-3483 of the Code of Virginia.

Name of Petitioner: Peggy Belmont.

Nature of Petitioner's Request: To expand the list of Type I approved providers for continuing education to include the Virginia Occupational Therapy Association and the American Occupational Therapy Association.

Agency Plan for Disposition of Request: The petition has been filed with the Registrar of Regulations and will be published on January 9, 2017. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov;

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Air Pollution Control Board intends to consider amending **9VAC5-80, Permits for Stationary Sources (Rev. K16)**. Title V of the 1990 Clean Air Act requires that states develop permit fee programs to pay for all of the direct and indirect costs of the state's Title V Permit Program. Virginia's Title V Permit Program is projected to become underfunded in fiscal year (FY) 2018 because air emission fee revenue is decreasing and because the fee schedule does not reflect actual costs of the program. The intent of this regulatory action is to comply with state and federal requirements to fully fund Virginia's Title V Permit Program. The goal of this proposed action is to increase Title V fees enough to fully fund the Title V program, to restructure the existing Title V fee schedule to better reflect actual costs of the program, and to make other amendments determined to be necessary including clarification of the regulatory text.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 112, 165, 173, 182, and Title V of the federal Clean Air Act; 40 CFR Parts 51, 61, 63, 63, 70, and 72.

Public Comment Deadline: February 8, 2017.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

V.A.R. Doc. No. R17-4981; Filed December 16, 2016, 6:42 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-860, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Potable Water Treatment Plants**. The purpose of the proposed action is to establish appropriate and necessary permitting requirements for discharges of wastewater from potable water treatment plants. The proposed regulation will set forth standard language for effluent limitations and monitoring requirements necessary to regulate this category of dischargers. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The permit regulation specifies requirements that protect water quality below the discharge and that is essential to protect the health, safety, or welfare of citizens.

The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2018, and must be reissued in order to continue making it available after that date. Other issues that need consideration are: whether authorization to discharge should consider facilities with groundwater contamination, whether the registration statement requirements need to be clarified, whether the numerical limits and special conditions are still appropriate, whether land application requirements for water treatment residuals should be added, and whether the whole effluent toxicity requirements need to be adjusted. The regulation will also be reviewed for clarity based on questions raised during the implementation of the 2013 permit, if any additional conditions or other revisions are needed to make the potable water treatment plant general permit consistent with other types of general permits reissued since 2013, or any other issues raised during public comment and technical advisory committee discussions.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economic performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) is designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) whether technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

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

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

Public Comment Deadline: February 8, 2017.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, TTY (804) 698-4021, or email elleanore.daub@deq.virginia.gov.

V.A.R. Doc. No. R17-5011; Filed December 16, 2016, 8:37 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to update the FAMIS and FAMIS MOMS regulations after a periodic review. Regulations currently in place describe the implementation and oversight of the state's Children's Health Insurance Program (CHIP) (known in Virginia as the Family Access to Medical Insurance Security (FAMIS) Plan) and the CHIP waiver program for pregnant women known as FAMIS MOMS. Effective January 1, 2014, the Affordable Care Act required eligibility for health coverage under all health insurance affordability programs, including CHIP, to be based on a new modified adjusted gross income (MAGI) methodology. Calculating an applicant's MAGI eligibility entails defining household composition and executing income-counting procedures based on U.S. Internal Revenue Service rules. Federal law requires these changes to be made in the State Child Health Plan under Title XXI of the Social Security Act. Amendments under consideration would incorporate the required changes in eligibility determination standards and updates to operational processes supporting eligibility and renewal actions. Because the FAMIS MOMS program operates as a CHIP waiver, corresponding regulations related to FAMIS MOMS are also affected.

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

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Comment Deadline: February 8, 2017.

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.

VA.R. Doc. No. R17-4662; Filed December 19, 2016, 11:57 a.m.



TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider amending

22VAC30-80, Auxiliary Grants Program. The purpose of the proposed action is to add supportive housing as an option for individuals receiving the auxiliary grant. The regulation needs to be amended to provide clear guidance regarding the supportive housing setting, which is a new living arrangement that individuals who receive auxiliary payments may choose, in accordance with Chapter 567 of the 2016 Acts of Assembly. The goals of this amended regulation are to (i) add information about supportive housing as a new setting for auxiliary grants, (ii) define requirements for providers of the supportive housing setting, (iii) clarify providers responsibilities for each setting, and (iv) update terminology and other provisions for the Auxiliary Grant Program.

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

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Public Comment Deadline: February 9, 2017.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

VA.R. Doc. No. R17-4816; Filed December 16, 2016, 4:22 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-30. **Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: § 29.1-501 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendment allows anglers to legally harvest grass carp from public waters of the Commonwealth, except from department-owned or department-controlled lakes, provided that anglers ensure that harvested grass carp are dead.

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.

4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

EDITOR'S NOTE: Subsections A through G of 4VAC15-30-40 are not amended; therefore, the text of those subsections is not set out.

H. Exception for grass carp. Anglers may legally harvest grass carp of the family Cyprinidae from public waters of the Commonwealth, except from department-owned or department-controlled lakes, provided that anglers ensure that harvested grass carp are dead.

I. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to

threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

V.A.R. Doc. No. R16-4796; Filed December 19, 2016, 6:17 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-320. **Fish: Fishing Generally (amending 4VAC15-320-25, 4VAC15-320-120).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) correctly identify the railroad bridge over Big Walker Creek associated with the New River smallmouth bass protected slot limit; (ii) create a seasonal 40-inch to 48-inch protected slot limit on muskellunge on the New River from Claytor Dam downstream to the Virginia/West Virginia state line; (iii) reduce the geographic coverage associated with the limitation on harvesting large animals in the daily creel limit for blue catfish to the James River below the fall line and its tidal tributaries, the York River and its tributaries including the Mattaponi River and Pamunkey River, and Kerr Reservoir; (iv) implement a five-fish per day creel limit on longnose gar and bowfin for anglers using hook and line or bowfishing tackle; (v) implement a statewide recreational minimum size limit and increase the daily creel limit for American eels, while providing an exception to the daily creel limit to those individuals holding permits for the harvest of eels for sale from Back Bay or North Landing River, or both, in the City of Virginia Beach; (vi) remove the requirement of a special daily permit for fishing on a portion of Big Tumbling Creek on the Clinch Mountain Wildlife Management Area (Smyth County) where a seasonal catch and release area will be implemented effective January 1, 2018; and (vii) incorporate an amendment pertaining to American shad and hickory shad that was adopted by the board in 2014.

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.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate (combined); No statewide length limits	Lakes	
			Briery Creek Lake	No bass 16 to 24 inches, only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No bass less than 12 inches
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mt. Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell counties	No bass less than 20 inches, only 1 bass per day longer than 20 inches
			Dan River and tributaries downstream from the Union Street Dam, Danville	Only 2 of 5 bass less than 14 inches

Regulations

			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA - WV state line and its tributaries Little River downstream from Little River Dam in Montgomery County, Big Walker Creek from the Norfolk and Western <u>Southern</u> Railroad Bridge downstream to the New River, and Wolf Creek from the Narrows dam downstream to the New River in Giles County (This does not include Claytor Lake, which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA - TN state line	No bass less than 20 inches, only 1 per day longer than 20 inches
			North Fork Shenandoah River – Rt. 42 bridge, Rockingham Co. downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15

Regulations

		Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte Co.	Only 2 of 5 bass less than 14 inches
		Shenandoah River -	
		Confluence of South Fork and North Fork rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
		Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches, only 1 per day longer than 20 inches
		Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
		South Fork Shenandoah River -	
		Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
		Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches, only 1 per day longer than 20 inches
		Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches
		Staunton River -	
		Leesville Dam (Campbell County) downstream to the mouth of Difficult Creek, Charlotte County	No smallmouth bass less than 20 inches, only 1 per day longer than 20 inches

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striped bass	landlocked striped bass and landlocked striped bass x white bass hybrids	4 per day in the aggregate; No fish less than 20 inches	Buggs Island (Kerr) reservoir including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; No striped bass or hybrid striped bass less than 24 inches; June 1 - September 30: 4 per day in the aggregate; No length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate; November 1 - May 31: No striped bass 30 to 40 inches; June 1 - October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day; No striped bass less than 18 inches		
white bass		5 per day; No statewide length limits		

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walleye		5 per day in the aggregate; No walleye or saugeye less than 18 inches	New River upstream of Buck Dam in Carroll County	No walleye less than 20 inches
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	February 1 - May 31: 2 walleye per day; no walleye 19 to 28 inches; June 1 - January 31: 5 walleye per day; no walleye less than 20 inches
sauger		2 per day; No statewide length limits		
yellow perch		No statewide daily limit; No statewide length limits	Lake Moomaw	10 per day
chain pickerel		5 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs	No daily limit
northern pike		2 per day; No pike less than 20 inches		
muskellunge		2 per day; No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to the VA - WV state line the Claytor Dam, including Claytor Lake	1 per day No muskellunge less than 42 inches
			<u>New River - Claytor Dam downstream to the VA - WV state line</u>	<u>1 per day</u> <u>June 1 - last day of February: No muskellunge [less than 42 40 to 48] inches;</u> <u>March 1 - May 31: No muskellunge less than 48 inches</u>

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bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Flannagan and South Holston reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County.	No daily limit
			Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with Roanoke bass; No rock bass less than 8 inches
Roanoke bass		No statewide daily limit; No statewide length limits	Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with rock bass; No Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit

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	blue catfish	20 per day, only 1 blue catfish per day longer than 32 inches; <u>No statewide length limits</u>	<u>Kerr Reservoir</u>	<u>20 per day, except only 1 blue catfish per day longer than 32 inches</u>
			<u>James River and its tributaries below the fall line and York River and its tributaries (including the Pamunkey River and Mattaponi River) below the fall line</u>	<u>No daily limit, except only 1 blue catfish per day longer than 32 inches</u>
			<u>All rivers below the fall line other than the James River and its tributaries and the York River and its tributaries</u>	<u>No daily limit, except only 1 blue catfish per day longer than 32 inches</u>
	yellow, brown, and black bullheads	No daily limit; No length limits		
American shad and hickory shad	[James River above the fall line (14th Street Bridge), the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River above Harvell Dam, the Pamunkey River and the Mattaponi River above the Rt. 360 bridge, and the Rappahannock River above the Rt. 1 bridge, and] Virginia waters of Lake Gaston and Buggs Island (Kerr) Reservoir and tributaries to include the Dan and Staunton rivers	No possession (catch and release only)		
	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		

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	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	10 per day in the aggregate No length limits		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day; No drum less than 18 inches or greater than 27 inches		
spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day; No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and North Landing River and its tributaries	1 per day; No grey trout less than 12 inches		
southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day; No flounder less than 15 inches		

northern snakehead		Anglers may possess snakeheads taken from Virginia waters if they immediately kill the fish and notify the headquarters or a regional office of the department; notification may be made by telephoning (804) 367-2925 No statewide daily limit No statewide length limits		
<u>longnose gar</u>		<u>5 per day;</u> <u>No statewide length limits</u>		
<u>bowfin</u>		<u>5 per day;</u> <u>No statewide length limits</u>		
<u>American eel</u>		<u>25 per day;</u> <u>No eel less than 9 inches</u>	<u>Back Bay and North Landing River</u>	<u>No possession limit for those individuals possessing a permit obtained under 4VAC15-340-80</u>
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

4VAC15-320-120. Special daily permit for fishing in Clinch Mountain Wildlife Management Area, Douthat State Park Lake and, Crooked Creek, and Wilson Creeks Creek.

A. It shall be unlawful to fish in the portion of Big Tumbling Creek within the Clinch Mountain Wildlife Management Area (except in Little Tumbling Creek and Laurel Bed Lake), in Douthat State Park Lake and in Wilson Creek both above the lake to the park boundary and downstream to the lower USFS boundary, and in the Crooked Creek fee fishing area in Carroll County without having first paid to the department for such privilege a daily use fee. Such daily use fee shall be in addition to all other license fees provided by law. ~~Upon payment of the daily use fee the department shall issue a special permit that shall be signed and carried by the person fishing.~~

B. This fee will be required from the first Saturday in April through September 30 ~~at for the portion of Big Tumbling Creek within the Clinch Mountain Wildlife Management Area (except Little Tumbling Creek and Laurel Bed Lake)~~ and ~~at~~ Crooked Creek fee fishing area in Carroll County, and from the first Saturday in April through June 15 and from September 15 through October 31 at Douthat State Park Lake and Wilson Creek, except that the director may temporarily suspend fee requirements if conditions cause suspension of trout stocking. During the remainder of the year, ~~these waters Douthat State Park Lake, Wilson Creek, and the Crooked Creek fee fishing area in Carroll County~~ will revert to designated stocked trout waters and a trout license will be required except as provided in 4VAC15-20-190, and [beginning on January 1, 2018,] the portion of Big Tumbling Creek within the Clinch Mountain Wildlife Management Area will revert to a seasonal catch and release area subject to

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4VAC15-330-150. No fishing is permitted in these waters for five days preceding the opening day.

C. Upon payment of the daily use fee the department shall issue a special permit that shall be signed and carried by the person fishing.

D. Fishing shall begin at 9 a.m. on opening day at all fee areas. After opening day, fishing times will be as posted at each fee area.

E. The department may recognize clearly marked "children only" fishing areas within any department fee fishing area. Within these "children only" areas, children 12 years old or younger may fish without the daily use fee if accompanied by a fully licensed adult who has purchased a valid daily permit. No person older than 12 years of age may fish in these children-only areas. Also, children 12 years of age and younger can fish without a permit in all three fee fishing areas if under the direct supervision of a permitted adult. However, the combined daily creel limit for both adult and ~~child/children~~ child or children in such a party shall not exceed six trout. During the fee fishing season these waters will be subject to 4VAC15-330-60, 4VAC15-330-80, and 4VAC15-330-90, as it relates to designated stocked trout waters.

VA.R. Doc. No. R16-4797; Filed December 20, 2016, 3:14 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-120, 4VAC15-330-130, 4VAC15-330-150, 4VAC15-330-160; adding 4VAC15-330-210).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) remove requirements of 16-inch minimum size limits and artificial lures only for fishing for trout in a designated section of the South River and establish this area for fly fishing only, with a 20-inch minimum size for trout; (ii) create a seasonal catch-and-release section on Big Tumbling Creek (Smyth County) open annually to fishing for trout with the use of artificial lures only from October 1 until five days prior to the first Saturday in April, effective January 2018; (iii) create a catch-and-release fishery on a portion of South River in the City of Waynesboro, open to fishing for trout with the

use of artificial lures only; (iv) establish delayed harvest trout waters on three streams in Lee, Scott, and Wise Counties and remove a portion of South River in the City of Waynesboro from the delayed harvest trout program; and (v) develop youth-only stocked trout waters where only youth 15 years of age and younger can fish specific waters from April 1 through June 15.

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.

4VAC15-330-120. Special provisions applicable to certain portions of Buffalo Creek, Dan River, Pound River, Roaring Run, South River, and South Fork Holston River.

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, ~~in that portion of South River from the North Oak Lane Bridge in Waynesboro upstream to a sign posted 1.5 miles above the State Route 632 (Shalom Road) Bridge,~~ in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir, in that portion of the Pound River from a sign posted 0.4 miles below the Flannagan Dam, downstream 1.2 miles to a sign posted just upstream of the confluence of the Pound River and the Russell Fork River, in that portion of the South Fork Holston River in Smyth County from a sign posted at the upper Jefferson National Forest boundary downstream approximately four miles to a sign posted 500 feet upstream of the concrete dam at Buller Fish Culture Station, and in that portion of Roaring Run in Botetourt County from a sign posted at the third footbridge above the Roaring Run Furnace Day Use Area upstream approximately one mile to a sign posted at the Botetourt/Alleghany County line.

B. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

4VAC15-330-130. Special provision applicable to certain portions of Mossy Creek and South River.

It shall be lawful year around to fish using only artificial flies with single hooks in that portion of Mossy Creek in Augusta County upstream from the Augusta/Rockingham County line to a sign posted at the confluence of Joseph's Spring and in that portion of South River from the North Oak Lane Bridge in Waynesboro upstream to a sign posted 1.5 miles above the State Route 632 (Shalom Road) Bridge. The daily creel limit in these waters shall be one trout a day year

around and the size limit shall be 20 inches or more in length. All trout caught in these waters under 20 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 20 inches in length in this area.

4VAC15-330-150. Special provision applicable to Stewarts Creek Trout Management Area; certain portions of the Dan, Rapidan, South Fork Holston and Staunton rivers, the Brumley Creek, East Fork of Chestnut Creek, Little Stony Creek, Little Tumbling Creek, Big Tumbling Creek, North Creek, Roaring Fork, Spring Run, Stony Creek, Venrick Run, South River, and their tributaries.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within:

1. The Stewarts Creek Trout Management Area in Carroll County.
2. The Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County.
3. The Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County.
4. The East Fork of Chestnut Creek (~~Farmer's~~ Farmers Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties.
5. Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County.
6. That section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County.
7. North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County.
8. Spring Run from its confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County.
9. Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County.
10. Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County.
11. Stony Creek (Mountain Fork) and its tributaries within the Jefferson National Forest in Wise and Scott Counties from the outlet of High Knob Lake downstream to the confluence of Chimney Rock Fork and Stony Creek.
12. Little Stony Creek and its tributaries within the Jefferson National Forest in Scott County from the Falls of Little Stony Creek downstream to a posted sign at the Hanging Rock Recreation Area.

13. Little Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth and Tazewell Counties downstream to the concrete bridge.

14. [Effective January 1, 2018,] Big Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth County from a sign starting at the foot of the mountain and extending upstream seasonally from October 1 until five days prior to the first Saturday in April.

15. South River in the City of Waynesboro from the Arch Avenue Bridge downstream 2.2 miles to the Second Street Bridge.

All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Big Moccasin Creek, Chestnut Creek, Hardware River, Holliday Creek, Holmes Run, Indian Creek, North River, Passage Creek, Peak Creek, Pedlar River, North Fork of Pound and Pound rivers, Middle Fork of Powell River, and Roanoke River, and South River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from King Arthur Road downstream 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Big Moccasin Creek (Scott County) from the Virginia Department of Transportation foot bridge downstream approximately 1.9 miles to the Wadlow Gap Bridge, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in the Hardware River (Fluvanna County) from the Route 646 bridge upstream 3.0 miles to Muleshoe Bend as posted, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in Indian Creek within the boundaries of Wilderness Road State Park (Lee County), in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in North Fork of Pound and

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Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Middle Fork of Powell River (Wise County) from the old train trestle at the downstream boundary of Appalachia extending approximately 1.9 miles downstream to the trestle just upstream of the Town of Big Stone Gap, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), and in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge, ~~and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the City of Waynesboro.~~ From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

4VAC15-330-210. Special provisions applicable to youth-only stocked trout waters.

Waters selected by the director for inclusion into the Youth-Only Stocked Trout Program will be considered youth-only stocked trout waters from April 1 through June 15. Only youth 15 years of age and younger may participate in the program. The daily trout creel limit shall be three. From June 16 through March 31, statewide fishing regulations and licensing requirements apply. Adults (17 years of age and older) are not required to have a freshwater fishing license or a trout license to assist youth fishing in youth-only stocked trout waters. Adults assisting youth (15 years of age and younger) while fishing in youth-only stocked trout waters may:

1. Bait the hook;
2. Assist in casting; and
3. Assist with removing the fish from the hook or line.

Adults may not assist with catching a fish (setting the hook or retrieving the fish).

VA.R. Doc. No. R16-4798; Filed December 19, 2016, 11:39 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-30, 4VAC15-340-70, 4VAC15-340-80).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park

Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) remove the summer portion of the Back Bay and North Landing River gill net season, which was July 1 through November 1, for "striped" mullet only, and allow the harvest of striped mullet during the remainder of the gill net season from November 1 through March 31; (ii) modify the minimum size and creel limit for any American eels that are harvested with eel pots for personal use in the waters of Back Bay and the North Landing River; and (iii) modify the minimum size for American eels harvested with eel pots for commercial purposes in the waters of Back Bay and the North Landing River.

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.

4VAC15-340-30. Gill nets.

A. Authorization to take fish. A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than [~~4-inch~~ one-inch] bar or square mesh (three-inch stretch mesh). Applicants must annually purchase tags for each net the applicant intends to operate and attach a department tag to each net prior to use. A single permit will be issued to the permittee and shall list each tag number the permittee has been issued. All nets must be checked daily and all game fish returned to the wild.

B. Permit holder to be present when gill net is being set and checked for fish. The holder of a gill net permit must be present with the net at all times when it is being set and checked for fish. The holder may have others to assist him, and such persons assisting are not required to have a permit. However, those assisting the permittee must meet the fishing license requirements of the Commonwealth.

C. Times and places permitted in Virginia Beach City; fish which may be taken. Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) ~~for the taking of mullet only for table use and also for sale from July 1 through November 1, both dates inclusive; and for the taking of other nongame fish, except mullet, alewife, and blueback herring, for table use and also for sale from November 1 through March 31, both dates inclusive.~~ The harvest limit for anadromous American and hickory shad shall be 10 per day, in the aggregate. Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such nets must be marked at both ends and at least every 100 feet

along the length of the net with a five-inch by 12-inch minimum dimensions float.

4VAC15-340-70. Eel pots for taking American eels for personal use.

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits for American eels designated for personal use. Such permits shall authorize the taking of American eels for personal use only (not for sale) with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of eels in the Commonwealth is not prohibited by other state or federal law or regulation.

B. It shall be unlawful for a permit holder to possess elvers.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel of 1/2-inch by 1-inch mesh. Buoys of all pots set must be marked by permanent means with the permit holder's name, address, and phone number.

E. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

F. It shall be unlawful for any permit holder to possess more than ~~50~~ 25 eels daily. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the daily possession limit shall be for the boat or vessel and shall be equal to the number of permit holders on board multiplied by ~~50~~ 25. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any eel taken after the daily possession limit has been reached shall be returned to the water immediately. Possession of any quantity of eels that exceeds the daily possession limit described in this subsection shall be presumed to be for commercial purposes.

G. For the purposes of this section, the term "elver" shall mean any American eel of less than ~~six~~ nine inches in total length.

4VAC15-340-80. Eel pots for taking American eels for sale.

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits designated for the sale of American eels. Such permits shall authorize the taking of American eels for sale, as specified, with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of American eels in the Commonwealth is not prohibited by other state or federal law or regulation. To be eligible, applicants must document harvest of at least one pound of American eels from Back Bay or North Landing River or their tributaries via reports submitted through the Virginia

Marine Resources Commission Mandatory Harvest Reporting Program during the period January 1, 2007, to December 31, 2012, both dates inclusive. Applicants must document the reported harvest occurred while the applicant held a valid commercial fish pot or eel pot license issued by the Virginia Marine Resources Commission.

B. It shall be unlawful for permit holders to possess ~~elvers~~ any American eel less than nine inches [in] total length.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel consisting of 1/2-inch by 1-inch mesh.

E. The permit holder's last name and Virginia Department of Game and Inland Fisheries American eel pot number must be permanently attached to buoys of all eel pots set. The maximum number of pots authorized per permit holder under this permit shall be 300.

F. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and in North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

G. It shall be unlawful for any person to ship or otherwise transport any package, box, or other receptacle containing fish taken under an eel pot permit unless the same bears the permit holder's name and address.

H. Failure to comply with the daily harvest and sales reporting requirements as detailed in conditions of the permit shall be unlawful and may result in immediate permit revocation. It shall be the permit holder's responsibility to report "No Activity" when no activity occurs during a monthly reporting period.

~~I. For the purposes of this section, the term "elver" shall mean any American eel of less than six inches in total length.~~

VA.R. Doc. No. R16-4799; Filed December 19, 2016, 7:03 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc. (amending 4VAC15-350-70).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park

Regulations

Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) remove longnose gar and bowfin from, and add grass carp to, the list of species that can be taken in unlimited numbers with bow and arrow or crossbow, under certain circumstances, and (ii) establish creel limits for longnose gar and bowfin.

4VAC15-350-70. Taking common carp, grass carp, northern snakehead, bowfin, catfish, and gar with bow and arrow or crossbow.

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, and gar from the public inland waters of the Commonwealth, grass carp from public inland waters of the Commonwealth except department-owned or department-controlled lakes, and bowfin and catfish from below the fall line in tidal rivers of the Chesapeake Bay, except waters stocked with trout, by means of bow and arrow or crossbow.

B. Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, grass carp, northern snakehead, bowfin, catfish, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner mentioned in this section shall be required to have a regular fishing license.

D. Creel limits. Common carp, grass carp, northern snakehead, ~~bowfin, and~~ catfish, ~~and gar~~ – unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions and provided that any angler taking grass carp ensure that harvested fish are dead. The creel limit for bowfin and longnose gar shall be five fish per day.

V.A.R. Doc. No. R16-4800; Filed December 19, 2016, 7:29 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments remove longnose gar and bowfin from the list of species that can be taken in unlimited numbers and add grass carp to the list of species that can be taken in unlimited numbers, except in certain circumstances.

4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, [~~subdivision 8 of~~] 4VAC15-320-40, and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed below:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, ~~bowfin, longnose gar,~~ mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, goldfish, and Asian clams. Grass carp may only be harvested in unlimited numbers from public inland waters of the Commonwealth other than department-owned or department-controlled lakes. Anglers taking grass carp must ensure that all harvested grass carp are dead.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders (each under six inches in total length), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be five. Snapping turtles shall only be taken from June ~~4th~~ 1 to September ~~30th~~ 30. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken in any number for private use: candy darter, eastern hellbender, diamondback terrapin, and spotted turtle.

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

- a. Period of captivity does not exceed 30 days;
- b. Animals must be liberated at the site of capture;
- c. Animals must have been housed separately from other wild-caught and domestic animals; and
- d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A of this section. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A of this section may only be taken (i) by hand, hook and line; (ii) with a seine not exceeding four feet in depth by 10 feet in length; (iii) with an umbrella type net not exceeding five by five feet square; (iv) by small minnow traps with throat openings no larger than one inch in diameter; (v) with cast nets; and (vi) with hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take the spiny riversnail (*Io fluvialis*) in the Tennessee drainage in Virginia (Clinch, Powell, and the North, South, and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels from any inland waters of the Commonwealth.

D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth, and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

VA.R. Doc. No. R16-4801; Filed December 19, 2016, 8:09 p.m.

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-150).**

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

Effective Dates: December 15, 2016, through January 14, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendment changes the individual commercial harvest quota for the coastal area of Virginia for all open seasons and for all legal gear from 138,640 to 136,141 pounds of striped bass.

4VAC20-252-150. Individual commercial harvest quota.

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be 1,064,997 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach 1,064,997 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be ~~138,640~~ 136,141 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach ~~138,640~~ 136,141 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning an individual's tags for commercial harvests in the Chesapeake area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

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D. For the purposes of assigning an individual's tags for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the reported average coastal area harvest weight of striped bass harvested by the permitted individual during the previous fishing year, except as described in subsection E of this section. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

E. For any individual whose reported average coastal area harvest weight of striped bass in the previous fishing year was less than 12 pounds, a 12-pound minimum weight shall be used to convert that individual's harvest quota of striped bass, in pounds of fish, to harvest quota in number of fish.

VA.R. Doc. No. R17-5003; Filed December 14, 2016, 11:41 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-50, 4VAC20-252-60, 4VAC20-252-70).

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

Effective Date: January 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The recreational reporting requirements are amended to (i) establish an individual, a charter or headboat, and a private vessel recreational permit; (ii) require that the permit identification number and the water body where the striped bass were caught and harvested or released be reported; (iii) require reporting within seven days of the trip; and (iv) require recording of lack of participation. The same recreational requirements for the regular season of striped bass also apply to the trophy-size season.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Recreational vessel" means any private vessel, charter vessel, or headboat vessel.

"Share" means a percentage of the striped bass commercial harvest quota.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

4VAC20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take, catch, or attempt to take or catch any striped bass by any gear or method other than hook and line, rod and reel, hand line, or spearing.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season, except as described in 4VAC20-252-115. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess, land, and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24-hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, except as described in 4VAC20-252-115. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade, or barter any striped bass taken by hook and line, rod and reel, hand line, or spearing provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, hand line,

or spear fishermen for hire unless the captain has obtained a Striped Bass Charter Boat Permit from the commission and is a Coast Guard charter licensee.

I. Striped bass charter boat permittees shall report to the commission, on forms provided by the commission, ~~all daily quantities permit identification number, the number of striped bass caught and, whether harvested, and daily fishing hours for themselves or their customers, respectively or released; the water body where any striped bass is caught; and the number of anglers on board, captain included, within seven days after the trip occurred. The written report shall be forwarded~~ It shall be unlawful for any striped bass charter boat permittee to fail to report (i) trips where striped bass are targeted but not successfully caught or (ii) the permittee's lack of participation in the fishery to the commission no later than 15 days following the last day of any open season. In addition, striped bass charter boat permittees engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Striped Bass Recreational Fishery shall provide the report required by 4VAC20-252-60 and 4VAC20-252-70, respectively.

4VAC20-252-60. Bay and Coastal Spring Trophy-size Striped Bass Recreational Fisheries.

A. The open season for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through June 15, inclusive.

B. The area open for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through May 15, inclusive.

D. The area open for the Coastal Spring Trophy-size Striped Bass Recreational Fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 36 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. It shall be unlawful for any person, ~~16 years of age or older,~~ participating in the Bay and Coastal Spring Trophy-size striped bass recreational fisheries to fail to obtain a ~~Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat~~ an Individual, Private Vessel, or Charter-Headboat Spring Recreational Striped Bass Trophy Permit.

H. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report ~~the take, harvest, or trips where striped bass are caught, whether harvest or released, or the~~

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possession of any trophy-size striped bass, as described in subsection E of this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational fisheries. The report requirements shall be as follows:

1. ~~Any spring recreational striped bass trophy permittees or charter boat striped bass permittees~~ individual spring recreational striped bass trophy permittee shall provide the permittee name, his own commission permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if applicable; the date of any harvest; the number of individuals on board; the water body where the trophy-size striped bass was caught; and number of trophy-size striped bass kept or released, and the length of each trophy size striped bass kept or released. Any weight information on any kept or released trophy size striped bass may be provided voluntarily by the permittees.

2. Any private vessel or charter-headboat spring recreational striped bass trophy permittee shall provide the recreational vessel's commission permit identification number, date of any harvest, number of individuals on board, and number of trophy-size striped bass kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where trophy-size bass are caught or targeted even if the permittee was not on board the vessel during every such trip.

~~2.~~ 3. Any ~~spring recreational striped bass trophy permittees or charter boat striped bass permittees~~ permittee who did not participate in the Bay and Coastal Spring Trophy-size striped bass recreational seasons shall notify the commission of ~~their~~ his lack of participation by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational seasons on forms provided by the commission.

I. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and subsection G of this section, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Bay and Coastal Spring Trophy-size striped bass recreational seasons.

4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. It shall be unlawful for any person, ~~16 years of age or older,~~ participating in the Potomac River tributaries spring trophy-size striped bass recreational fishery to fail to obtain a ~~Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat~~ an Individual, Private Vessel, or Charter-Headboat Spring Recreational Striped Bass Trophy Permit.

F. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report ~~the take, harvest, or~~ trips where striped bass are caught, whether harvested or released, or the possession of any trophy-size striped bass, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after the close of the Potomac River tributaries spring trophy-size striped bass recreational fishery. The report requirements shall be as follows:

1. ~~Any spring recreational striped bass trophy permittees or charter boat striped bass permittees~~ individual spring recreational striped bass trophy permittee shall provide the permittee name, commission permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if applicable; the date of any harvest; the water body where the trophy-size striped bass was caught; the number of individuals on board; and number of trophy-size striped bass kept or released, ~~and the length of each trophy size striped bass kept or released. Any weight information on any kept or released trophy size striped bass may be provided voluntarily by the permittees.~~

2. Any private vessel or charter-headboat spring recreational striped bass trophy permittee shall provide the vessel's commission permit identification number; the date of any harvest; the number of individuals on board; and the number of trophy-size striped bass kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where trophy-size bass are caught or targeted even if the permittee was not on board the vessel during every such trip.

~~2.~~ 3. Any ~~spring recreational striped bass trophy permittees or charter boat striped bass permittees~~ permittee who did not participate in the Potomac River tributaries spring trophy-size striped bass recreational season shall notify the commission of ~~their~~ his lack of participation by the 15th day after the close of the Potomac River tributaries spring

trophy-size striped bass recreational season on forms provided by the commission.

G. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and 4VAC20-252-60 G, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Potomac River tributaries spring trophy-size striped bass recreational season.

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

FORMS (4VAC20-252)

~~2015 Striped Bass Charter Boat Fishing Reporting Form (rev. 12/14)~~

~~2015 Trophy Size Striped Bass Season Charter Boat Fishing Reporting Form (rev. 12/14)~~

~~Spring Striped Bass Recreational Trophy Size Report Form (rev. 3/2015)~~

[2017 Recreational/Charter Reporting Form \(undated, filed 12/2016\)](#)

VA.R. Doc. No. R17-5007; Filed December 20, 2016, 11:05 a.m.

Emergency Regulation

Title of Regulation: 4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).

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

Effective Dates: December 15, 2016, through January 14, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendments close the commercial fishing season for cobia from December 15, 2016, through December 31, 2016.

4VAC20-510-25. Commercial fishery possession limits and cobia fishing season.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two.

The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. The 2016 commercial fishery season for cobia shall extend from January 1, 2016, through December 14, 2016.

C. It shall be unlawful for any person fishing commercially to harvest, possess, or land cobia in 2016 except during the lawful 2016 commercial fishery season described in subsection B of this section.

VA.R. Doc. No. R17-5008; Filed December 14, 2016, 11:42 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-510. Pertaining to Amberjack and Cobia (adding 4VAC20-510-12, 4VAC20-510-15).

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

Effective Date: January 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments define "recreational vessel" and prohibit landing of cobia recreationally without a permit. The regulation adds the requirements for reporting cobia and requires a permittee to report the trips where cobia are caught.

4VAC20-510-12. Definitions.

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

"Recreational vessel" means any private vessel, charter vessel, or headboat vessel.

4VAC20-510-15. Recreational cobia permit and mandatory reporting.

A. It shall be unlawful for any person to possess or land any cobia harvested recreationally without first having obtained an Individual, Private Vessel, or Charter-Headboat Recreational Cobia Permit from the Marine Resources Commission (commission).

B. It shall be unlawful for any permittee to fail to report trips where cobia are caught, whether harvested or released, or the possession of any cobia in accordance with this section on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where cobia were targeted but not successfully caught by the 15th day after the close of the recreational cobia fishery season. The reporting requirements shall be as follows:

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1. Any individual recreational cobia permittee shall provide his own commission permit identification number; the commission permit identification number of the recreational vessel the individual is fishing from, if applicable; the date of any harvest; and the number of cobia kept or released.

2. Any private vessel or charter-headboat recreational cobia permittee shall provide the vessel's commission permit identification number; the date of any harvest; the number of individuals on board; and the number of cobia kept or released. Any such permittee must report all trips made by the vessel to which the permit applies where cobia are caught or targeted even if the permittee was not on board the vessel during every such trip.

3. Any permittee who did not participate in the recreational cobia season shall notify the commission of his lack of participation by the 15th day after the close of the recreational cobia season on forms provided by the commission.

4. Any permittee who fails to report the harvest of cobia shall be ineligible to receive an Individual, Private Vessel, or Charter-Headboat Recreational Cobia Permit in the year following the year in which that permittee failed to report. Any permittee who did not participate in the recreational cobia season and fails to report no activity shall also be ineligible to receive an Individual, Private Vessel, or Charter-Headboat Recreational Cobia Permit in the year following the year where that permittee failed to report.

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

FORMS (4VAC20-510)

[2017 Recreational Reporting Form \(filed 12/2016\)](#)

VA.R. Doc. No. R17-5004; Filed December 19, 2016, 2:20 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-1090. **Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

Statutory Authority: § 28-2-201 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments increase certain commercial and recreational fees effective December 1, 2017.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year. The fees listed below include a \$1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	\$190.00 \$226.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00 \$107.00
Delayed Entry Registration	\$190.00 \$226.00
Delayed Entry Registration License for a person 70 years or older	\$90.00 \$107.00
Seafood Landing License for each boat or vessel	\$175.00 \$209.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00 \$99.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00 \$75.00
Seafood Buyer's License -- For each place of business	\$126.00 \$150.00
Clam Aquaculture Product Owner's Permit	\$10.00 \$15.00
Oyster Aquaculture Product Owner's Permit	\$10.00 \$15.00
Clam Aquaculture Harvester's Permit	\$5.00 \$10.00
Oyster Aquaculture Harvester's Permit	\$5.00 \$10.00
Nonresident Harvester's License	\$444.00 \$530.00
2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	\$50.00

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For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	\$300.00	Oyster Hand Scrape	\$50.00 <u>\$72.00</u>
On any business shucking or packing no more than 1,000 gallons of oysters	\$500.00	To shuck and pack oysters, for any number of gallons under 1,000	\$12.00 <u>\$17.00</u>
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	\$1,000.00	To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00 <u>\$39.00</u>
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	\$2,000.00	To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00 <u>\$88.00</u>
On any business shucking or packing more than 25,000 gallons of oysters	\$4,000.00	To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00 <u>\$148.00</u>
On any oyster buyer using a single truck or location	\$100.00	To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00 <u>\$247.00</u>
On any oyster buyer using multiple trucks or locations	\$300.00	To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00 <u>\$346.00</u>
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	\$50.00	To shuck and pack oysters, for 200,000 gallons or over	\$456.00 <u>\$544.00</u>
3. OYSTER HARVESTING, SHUCKING, RELAY, AND BUYERS LICENSES		One-day permit to relay condemned shellfish from a general oyster planting ground	\$150.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	\$50.00 <u>\$55.00</u>	4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	\$100.00 <u>\$105.00</u>	For each person taking or catching crabs by dip nets	\$13.00 <u>\$18.00</u>
For each person taking oysters by hand, or with ordinary tongs	\$10.00 <u>\$33.00</u>	For ordinary trotlines	\$13.00 <u>\$18.00</u>
For each single-rigged patent tong boat taking oysters	\$35.00 <u>\$116.00</u>	For patent trotlines	\$51.00 <u>\$60.00</u>
For each double-rigged patent tong boat taking oysters	\$70.00 <u>\$114.00</u>	For each single-rigged crab-scrape boat	\$26.00 <u>\$31.00</u>
Oyster Dredge Public Ground	\$50.00 <u>\$72.00</u>	For each double-rigged crab-scrape boat	\$53.00 <u>\$63.00</u>
		For up to 210 peeler pots	\$36.00 <u>\$43.00</u>
		For up to 20 tanks and floats for shedding crabs	\$9.00 <u>\$14.00</u>
		For more than 20 tanks or floats for shedding crabs	\$19.00 <u>\$24.00</u>
		For each crab trap or crab pound	\$8.00 <u>\$13.00</u>
		5. CRAB POT LICENSES	
		For up to 85 crab pots	\$48.00 <u>\$57.00</u>

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For over 85 but not more than 127 crab pots	\$79.00 <u>\$94.00</u>	All other gill nets up to 600 feet	\$16.00 <u>\$21.00</u>
For over 127 but not more than 170 crab pots	\$79.00 <u>\$94.00</u>	All other gill nets over 600 feet and up to 1,200 feet	\$24.00 <u>\$29.00</u>
For over 170 but not more than 255 crab pots	\$79.00 <u>\$94.00</u>	Each person using a cast net or throw net or similar device	\$13.00 <u>\$18.00</u>
For over 255 but not more than 425 crab pots	\$127.00 <u>\$151.00</u>	Each fyke net head, weir, or similar device	\$13.00 <u>\$18.00</u>
6. HORSESHOE CRAB AND LOBSTER LICENSES		For fish trotlines	\$19.00 <u>\$24.00</u>
For each person harvesting horseshoe crabs by hand	\$16.00	Each person using or operating a fish dip net	\$9.00 <u>\$14.00</u>
For each boat engaged in fishing for or landing of lobster using less than 200 pots	\$41.00 <u>\$48.00</u>	On each haul seine used for catching fish, under 500 yards in length	\$48.00 <u>\$57.00</u>
For each boat engaged in fishing for or landing of lobster using 200 pots or more	\$166.00 <u>\$198.00</u>	On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00 <u>\$174.00</u>
7. CLAM HARVESTING LICENSES		For each person using commercial hook and line	\$31.00 <u>\$37.00</u>
For each person taking or harvesting clams by hand, rake, or with ordinary tongs	\$24.00 <u>\$29.00</u>	For each person using commercial hook and line for catching striped bass only	\$31.00 <u>\$37.00</u>
For each single-rigged patent tong boat taking clams	\$58.00 <u>\$69.00</u>	For up to 100 fish pots	\$19.00 <u>\$24.00</u>
For each double-rigged patent tong boat taking clams	\$84.00 <u>\$100.00</u>	For over 100 but not more than 300 fish pots	\$24.00 <u>\$29.00</u>
For each boat using clam dredge (hand)	\$19.00 <u>\$24.00</u>	For over 300 fish pots	\$62.00 <u>\$74.00</u>
For each boat using clam dredge (power)	\$44.00 <u>\$52.00</u>	For up to 100 eel pots	\$19.00 <u>\$24.00</u>
For each boat using hydraulic dredge to catch soft shell clams	\$83.00	For over 100 but not more than 300 eel pots	\$24.00 <u>\$29.00</u>
For each person taking surf clams	\$124.00	For over 300 eel pots	\$62.00 <u>\$74.00</u>
Water Rake Permit	\$24.00 <u>\$29.00</u>	10. MENHADEN HARVESTING LICENSES	
8. CONCH (WHELK) HARVESTING LICENSES		Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
For each boat using a conch dredge	\$58.00 <u>\$69.00</u>	On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	\$249.00 <u>\$257.00</u>
For each person taking channeled whelk by conch pot	\$51.00 <u>\$60.00</u>	On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	\$996.00 <u>\$1,029.00</u>
9. FINFISH HARVESTING LICENSES			
Each pound net	\$41.00 <u>\$48.00</u>		
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00 <u>\$29.00</u>		

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On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	\$249.00 <u>\$257.00</u>	Rental Boat, resident, per boat, with maximum fee of \$703	\$14.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	\$996.00 <u>\$1,029.00</u>	Rental Boat, nonresident, per boat, with maximum fee of \$1270	\$18.00
11. COMMERCIAL GEAR FOR RECREATIONAL USE		Commercial Fishing Pier (Optional)	\$632.00
		Disabled Resident Lifetime Saltwater License	\$10.00
Up to five crab pots with a terrapin excluder device	\$36.00 <u>\$41.00</u>	Disabled Nonresident Lifetime Saltwater License	\$10.00
Up to five crab pots without a terrapin excluder device	\$46.00 <u>\$51.00</u>	Reissuance of Saltwater Recreational Boat License	\$5.00
Crab trotline (300 feet maximum)	\$10.00 <u>\$15.00</u>	13. COMBINED SPORTFISHING LICENSE	
One crab trap or crab pound	\$6.00 <u>\$11.00</u>	This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
One gill net up to 300 feet in length	\$9.00 <u>\$14.00</u>	Residents	\$39.50
Fish dip net	\$7.00 <u>\$12.00</u>	Nonresidents	\$71.00
Fish cast net	\$10.00 <u>\$15.00</u>	14. COMBINED SPORTFISHING TRIP LICENSE	
Up to two eel pots	\$10.00 <u>\$15.00</u>	This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
12. SALTWATER RECREATIONAL FISHING LICENSE		Residents	\$24.00
Individual, resident	\$17.50	Nonresidents	\$31.00
Individual, nonresident	\$25.00	15. TIDAL BOAT SPORTFISHING LICENSE	
Temporary 10-Day, resident	\$10.00	Residents	\$126.00
Temporary 10-Day, nonresident	\$10.00	Nonresidents	\$201.00
Recreational boat, resident	\$48.00	16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	\$76.00	Individual Resident Lifetime License	\$276.00
Head Boat/Charter Boat, resident, six or less passengers	\$190.00	Individual Nonresident Lifetime License	\$500.00
Head Boat/Charter Boat, nonresident, six or less passengers	\$380.00	Individual Resident Lifetime License age 45 - 50	\$132.00
Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person, over six persons	\$190.00	Individual Nonresident Lifetime License age 45 - 50	\$240.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person, over six persons	\$380.00	Individual Resident Lifetime License age 51 - 55	\$99.00
		Individual Nonresident Lifetime License age 51 - 55	\$180.00
		Individual Resident Lifetime License age 56 - 60	\$66.00
		Individual Nonresident Lifetime License age 56 - 60	\$120.00

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Individual Resident Lifetime License age 61 - 64	\$35.00
Individual Nonresident Lifetime License age 61 - 64	\$60.00
Individual Resident Lifetime License age 65 and older	\$5.00

VA.R. Doc. No. R17-5006; Filed December 14, 2016, 11:42 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-1120. Pertaining to Tilefish and Grouper (amending 4VAC20-1120-20, 4VAC20-1120-31, 4VAC20-1120-32).

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

Effective Date: January 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments divide the recreational permit by individual, private, or charter-headboat and modify the recreational mandatory harvest reporting requirements. Changes to the reporting requirements include reporting of tilefish or grouper within seven days after the trip occurs and reporting of the Marine Resources Commission permit identification number and number of tilefish or grouper kept and released. A permittee who does not participate in the tilefish and grouper recreational fishery season must report that information by the 15th day after the close of the recreational fishery season. A permittee who does not report or reports no activity will not be eligible to receive a permit in the subsequent year.

4VAC20-1120-20. Definitions.

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

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Grouper" means any of the following species:

- Black grouper, *Mycteroperca bonaci*
- Coney, *Cephalopholis fulva*
- Gag grouper, *Mycteroperca microlepis*
- Goliath grouper, *Epinephelus itajara*

- Graysby, *Cephalopholis cruentata*
- Misty grouper, *Epinephelus mystacinus*
- Nassau grouper, *Epinephelus striatus*
- Red grouper, *Epinephelus morio*
- Red Hind, *Epinephelus guttatus*
- Rock Hind, *Epinephelus adscensionis*
- Scamp, *Mycteroperca phenax*
- Snowy grouper, *Epinephelus niveatus*
- Speckled Hind, *Epinephelus drummondhayi*
- Tiger grouper, *Mycteroperca tigris*
- Warsaw grouper, *Epinephelus nigritus*
- Wreckfish, *Polyprion americanus*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Yellowfin grouper, *Mycteroperca venenosa*
- Yellowmouth grouper, *Mycteroperca interstitialis*

"Recreational fishing" or "fishing recreationally" or "recreationally fishing" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Recreational vessel" means any private vessel, charter vessel, or headboat vessel.

"Tilefish" means any of the following species:

- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

4VAC20-1120-31. Recreational landing permit.

It shall be unlawful to possess aboard or to land ~~from any private recreational fishing vessel, charter boat, or head boat,~~ any tilefish or grouper harvested recreationally without first having obtained a an Individual, Private Vessel, or Charter-Headboat Tilefish and Grouper Landing Permit for that vessel from the Marine Resources Commission. ~~Such permit shall be completed in full by the vessel owner or operator, approved by the commissioner or his designee, and a copy shall be kept with the permittee while tilefish or grouper is in the possession of that permittee.~~

4VAC20-1120-32. Recreational mandatory harvest reporting.

A. It shall be unlawful for any registered ~~Tilefish and Grouper Landing Permittee~~ tilefish and grouper landing permittee, as described in 4VAC20-1120-31, to fail to ~~fully report harvests and related information as set forth in this chapter and as provided by 4VAC20-610-60 trips where~~ tilefish or grouper are caught, whether harvested or released, or the possession of any tilefish or grouper in accordance with this section, on forms provided by the Marine Resources Commission (commission) within seven days after the trip occurred. It shall be unlawful for any permittee to fail to

report trips where tilefish or grouper were targeted but not successfully caught, and reports shall be made using forms provided by the commission by the 15th day after the close of the tilefish and grouper recreational fishery seasons.

B. Registered tilefish and grouper Landing Permittees shall complete a daily form that accurately enumerates and legibly describes that permittee's daily harvest from Virginia tidal and federal waters. The form used to record daily harvest shall be that provided by the commission or approved by the commission.

C. Registered tilefish and grouper Landing Permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily harvest records described in subsection D of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

D. The monthly harvest report and daily harvest records from registered B. Any individual tilefish and grouper Landing Permittees landing permittee shall include submit a report including the name and signature commission permit identification number of the registered tilefish and grouper Landing Permittee and his license number landing permittee; commission permit identification number of the vessel the individual is fishing from, if applicable; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours fished; number of individuals on board, including captain; species harvested; number of discard by species; live weight of each individual species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number) and the number of tilefish and grouper, by species, kept and released.

C. Any private vessel or charter-headboat recreational tilefish and grouper landing permittee shall provide the vessel's commission permit identification number; date of any harvest; number of individuals on board; and number of tilefish and grouper, by species, kept and released. Any such permittee must report all trips made by the vessel to which the permit applies where tilefish and grouper are caught or targeted even if the permittee was not on board the vessel during every such trip.

D. Any permittee who did not participate in the tilefish and grouper recreational fishery season shall notify the commission of his lack of participation by the 15th day after the close of the tilefish and grouper recreational fishery seasons.

E. Any permittee who fails to report the harvest of any tilefish or grouper shall be ineligible to receive the permit in the year following the year in which that permittee failed to report. Any permittee who did not participate in the recreational tilefish and grouper recreational fishery seasons and fails to report no activity shall also be ineligible to receive the permit in the year following the year in which that permittee failed to report.

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

FORMS (4VAC20-1120)

[2017 Recreational Reporting Form \(undated, filed 12/2016\)](#)

VA.R. Doc. No. R17-5005; Filed December 19, 2016, 2:40 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Fast-Track Regulation

Title of Regulation: **6VAC20-180. Crime Prevention Specialists (amending 6VAC20-180-10, 6VAC20-180-20, 6VAC20-180-30).**

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 10, 2017.

Effective Date: February 27, 2017.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

Basis: Section 9.1-161 of the Code of Virginia provides that the Criminal Justice Services Board shall adopt regulations establishing minimum standards for certification of crime prevention specialists. Such regulations shall require that the chief law-enforcement officer of the locality or the campus police departments of institutions of higher education established by Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 of the Code of Virginia wherein the person serves shall approve the certification before a candidate for certification may serve as a crime prevention specialist.

Purpose: The regulation is being amended for the purpose and goal of correcting regulatory citations, providing clarifying language, and removing redundant language. This regulation is essential to protect the health, safety, and welfare of citizens. The regulation sets forth the process for becoming a certified crime prevention specialist. Certified crime prevention specialists work with law enforcement, businesses, and citizens in their communities to provide security

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assessments, training on topics such as personal safety, crime prevention for seniors, school safety and security, and establish Neighborhood Watch programs. The work of crime prevention specialists reduces crimes within communities, which protects the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: The Department of Criminal Justice Services and the Criminal Justice Services Board anticipate the proposed amendments to be noncontroversial and appropriate for a fast-track rulemaking action because the amendments do not change the current requirements to become a certified crime prevention specialist.

Substance: The amendments clarify the following: (i) employees of private colleges and universities are eligible to be trained and certified as a crime prevention specialist and (ii) agency heads may delegate the authority to designate employees to be trained and certified as crime prevention specialist. The amendments remove an incorrect citation, 6VAC20-80-10, referencing the definition section of Rules Relating to Certification of Criminal Justice Instructors and replace it with 6VAC20-80-20, which identifies the requirements for general instructor certification. The amendments also change a citation to Title 23 of the Code of Virginia to the correct citation in Title 23.1 of the Code of Virginia.

Issues: The advantages to the public and the Commonwealth include the ability to reference the correct citations in the Virginia Administrative Code and Code of Virginia, clarification of confusing language, and the removal of redundant language where appropriate. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its regulation for the crime prevention specialists to update out of date references to regulation and to the Code of Virginia (COV). The Board also proposes to remove a listing of who is eligible to be a trained as a crime prevention specialist because the list does not include all eligible groups.

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

Estimated Economic Impact. This regulation sets forth the process to become a certified crime prevention specialist. Board staff reports that "Certified crime prevention specialists work with law enforcement, businesses and citizens in their communities to: provide security assessments and training on topics such as personal safety, crime prevention for seniors and school safety and security" Crime prevention specialists

also work in communities to help establish Neighborhood Watch programs.

The Board proposes several changes to this regulation that do not change current rules or practice. Specifically, the Board proposes to update references to the COV and to regulation where referenced standards have been moved since this regulation was last updated. The Board also proposes to remove language that contains a list of who can receive crime prevention specialist training because that list does not include all eligible groups and is, therefore, misleading. Other language in the regulation specifies that "the agency administrator of any local, state or federal government agency or college or university" may designate employees for certification training. Changes such as these do not impose any costs on any affected entity but provide the benefit of additional clarity to interested parties reading the regulation.

Businesses and Entities Affected. These proposed regulatory changes will affect all sworn and non-sworn law-enforcement officers as well as individuals working in schools, on college campuses and in universities who are eligible to be certified as crime prevention specialists. Board staff reports that there are currently twelve certified crime prevention communities¹ and four certified crime prevention campuses² in the Commonwealth; all of these are required to have at least one certified crime prevention specialist.

Localities Particularly Affected. The Cities of Galax, Hampton, Newport News, Roanoke, and Virginia Beach, the Counties of Chesterfield, Fairfax, Hanover and Henrico and the Towns of Christianburg, Herndon and Smithfield are crime prevention communities and will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

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. No small businesses will be adversely affected by these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses will be adversely affected by these proposed regulatory changes.

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.

¹ These crime prevention communities are the Cities of Galax, Hampton, Newport News, Roanoke, and Virginia Beach, the Counties of Chesterfield, Fairfax, Hanover, Henrico and the Towns of Christianburg, Herndon and Smithfield.

² These four campuses are those for Virginia Commonwealth University, Virginia Polytechnic Institute and State University, University of Richmond and Christopher Newport University.

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services (DCJS) concurs generally with the economic impact analysis provided by the Department of Planning and Budget. The revisions do not change the requirements for becoming a crime prevention specialist; therefore, there is no economic impact to certified crime prevention specialists, certified crime prevention communities, or certified crime prevention campuses.

Summary:

The amendments (i) clarify that an employee of a private college or university is eligible to be trained and certified as a crime prevention specialist, (ii) clarify that an agency head may delegate the authority to designate employees to be trained and certified as a crime prevention specialist, and (iii) correct citations to the Virginia Administrative Code and the Code of Virginia.

6VAC20-180-10. Definitions.

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

"Agency administrator" means any chief of police, sheriff, or any agency head of local, state, federal and college or university law-enforcement agencies sworn under § ~~23-232-1~~ 23.1-810 of the Code of Virginia.

"Crime prevention services" means providing for the anticipation, recognition, and appraisal of a crime risk and the initiation of an activity to remove or reduce the opportunity for crime.

"Department" means the Department of Criminal Justice Services.

"Employee" means any sworn or civilian individual, including auxiliaries, reserve-deputies, and volunteers employed by a local, state, or federal government agency, or college or university in the Commonwealth of Virginia.

"General law-enforcement instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, ~~contained~~

in ~~6VAC20-80-10~~ 6VAC20-80-20, and is eligible to instruct, teach, or lecture approved or mandated training.

"Local, state, or federal government agency" means any political unit or identifiable subunit through which an individual or body that governs, exercises its authority, performs its functions, and which has as its principal duty or duties the administration of public policy.

6VAC20-180-20. Duties of a crime prevention specialist.

The duties of crime prevention specialists ~~are~~ shall be in accordance with § 9.1-161 of the Code of Virginia and include the following:

1. To provide citizens within their jurisdiction information concerning personal safety and the security of property, and other matters relating to the reduction of criminal opportunity.
2. To provide business establishments within their jurisdiction information concerning business and employee security, and other matters relating to the reduction of criminal activity, including ~~but not limited to,~~ internal and external theft, environmental design, and computer security.
3. To provide citizens or businesses within their jurisdiction assistance in forming and maintaining neighborhood or business watch groups or other community-based crime prevention programs.
4. To provide assistance to other units of government within their jurisdiction in developing plans and procedures related to the reduction of criminal activity in government and the community.
5. To promote the reduction and prevention of crime within their jurisdiction and the Commonwealth.

6VAC20-180-30. Eligibility.

~~A. Any employee (sworn, nonsworn, or volunteer) of a local, state or federal government agency who serves in a law enforcement, crime prevention, or criminal justice capacity is eligible to be trained and certified as a crime prevention specialist.~~

~~B. A.~~ The agency administrator or his designee of any local, state, or federal government agency or college or university may designate one or more eligible employees in his department or office who serve in a law-enforcement, crime prevention, or criminal justice capacity to be trained and certified as crime prevention specialists. ~~Applicants for recertification shall be recommended by the agency administrator or his designee.~~ Application shall be made on the Crime Prevention Specialist Certification Application-Form A.

~~C. B.~~ All crime prevention specialist applicants provided for in this chapter shall be approved only upon recommendation of a law-enforcement agency having jurisdiction where the crime prevention specialist shall serve.

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D. C. This chapter does not limit or prohibit the chief executive of any local, state or federal government agency from assigning personnel to crime prevention tasks who are not certified as crime prevention specialists.

VA.R. Doc. No. R17-4900; Filed December 8, 2016, 8:38 p.m.

BOARD OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: 6VAC35-160. Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (amending 6VAC35-160-10, 6VAC35-160-30 through 6VAC35-160-70, 6VAC35-160-90, 6VAC35-160-100, 6VAC35-160-110, 6VAC35-160-130, 6VAC35-160-150, 6VAC35-160-170, 6VAC35-160-180, 6VAC35-160-210, 6VAC35-160-220, 6VAC35-160-260, 6VAC35-160-280 through 6VAC35-160-360; repealing 6VAC35-160-390).

Statutory Authority: §§ 16.1-223 and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 10, 2017.

Agency Contact: Janet P. Van Cuyk, Legislative and Research Manager, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3879, FAX (804) 371-6490, or email janet.vancuyk@djj.virginia.gov.

Basis: The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which provides that the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth." Sections 16.1-222 and 16.1-223 of the Code of Virginia specifically address the establishment of the Virginia Juvenile Justice Information System and the board's related authority to promulgate regulations governing the security and confidentiality of any data submission.

Purpose: The regulation applies to the juvenile record information of all juveniles supervised by or in the care and custody of the department. The purpose of the proposed amendments is to maintain the confidentiality requirements of § 16.1-300 of the Code of Virginia and to ensure that the regulation is consistent with the security requirements for juvenile information set out in the Commonwealth of Virginia Information Technology Resource Management (COV ITRM) Standards.

The proposed amendments will ensure that background checks are required for individuals who have access to juvenile record information and that Department of Juvenile Justice (DJJ) regulations are consistent with the COV ITRM statewide technology standards. These standards are intended to ensure that juvenile record data are collected, disseminated, and processed in a manner that protects the security and

confidentiality of the data. These amendments are therefore necessary to protect the safety and welfare of the general public.

Substance: The proposed amendments (i) require background checks for those individuals who will have access to juvenile record information; and (ii) as DJJ is subject to COV ITRM Standards, replace references to DJJ data policies with references to these statewide technology standards. While the existing regulation does not mandate background checks before individuals may access juvenile records, DJJ's policy requires such background checks. In addition, the proposed amendments remove antiquated terms and requirements and provide clarifying language for previously vague processes.

Issues: The proposed amendments provide several advantages to the general public. The ITRM standards, after which the proposed amendments to the regulation are modeled, ensure that juvenile record data are collected, disseminated, and processed in a manner that protects the security and confidentiality of the data and thereby protects the general public. The regulation provides a mechanism for individuals or their representatives to challenge juvenile record information, and the proposed amendments clarify the process.

Additionally, the proposed amendments benefit the department, state and locally operated court service units, secure juvenile detention centers, juvenile group homes, and other public and child welfare agencies by providing them with specific, up-to-date guidance regarding (i) the processes for requesting juvenile record information, (ii) the manner in which challenges concerning juvenile record information must be handled, and (iii) the process by which juvenile record information may be expunged.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a comprehensive review, the Board of Juvenile Justice (Board) proposes to amend its regulation governing juvenile records. The Board proposes numerous clarifying changes and several substantive changes; the substantive changes to this regulation include requiring background checks for all individuals who are given access to the Virginia Juvenile Justice Information System (VJJIS) and adding references to Commonwealth of Virginia Information Technology Resource Management (COV ITRM) standards.¹

Result of Analysis. Benefits likely outweigh costs for this proposed change.

Estimated Economic Impact. This regulation governs access to the records of juveniles in the care of the Department of Juvenile Justice (DJJ). As the result of a comprehensive review the Board now proposes many changes to this regulation. Most of these amendments will not change any rights or obligations for regulated entities but are, instead, meant to bring the regulations up to date and clarify current requirements. For example, current language includes

references to authorized employees who are able to access juvenile records. Since private contractors are also authorized, in some instances,² to access records, these references were not as inclusive as they could be. The Board now proposes to replace the word "employees" with "individuals." No entity is likely to incur costs on account of this type of change. Affected entities will benefit from the additional clarity these changes bring.

In addition to these clarifying changes, the Board proposes two substantive changes to this regulation. Currently, the regulation allows for, but does not require, background checks for all individuals who will have access to juvenile records. The Board now proposes to require background checks for all such individuals. Board staff reports that, even though current regulatory language does not require these background checks, DJJ policy does. Because of this, no affected entities are likely to incur costs on account of this change. To the extent that requiring background checks may make authorized individuals less likely to misuse the information that they can access, juveniles in custody will likely benefit from this change.

Current regulation contains several specific protocols for accessing information. For instance, current regulation contains language referencing DJJ's general requirements for remote access of records. As DJJ is subject to COV ITRM Standards,³ the Board now proposes to replace references to DJJ data policies with references to these statewide policies. No entity is likely to incur costs on account of this change; as this change will add clarity and eliminate the possibility that DJJ's data requirements would become obsolete as statewide requirements change, interested parties will benefit from it.

Businesses and Entities Affected. Board staff reports that this regulation sets juvenile data access rules for participating agencies. Participating agencies include 34 state and locally operated court services units, two DJJ operated juvenile correctional facilities, 24 locally operated secure detention centers, any juvenile group homes in the Commonwealth that are funded (in whole or in part) by the Virginia Juvenile Community Crime Control Act and any other entities that provide services or treatment to juveniles either through contract with DJJ or under the auspices of the Virginia Juvenile Community Crime Control Act. All of these entities and all juveniles whose information is in the VJJIS will be affected by these proposed regulatory changes.

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

Projected Impact on Employment. These proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation is unlikely to have any impact on the use or value of private property.

Real Estate Development Costs. This proposed regulation is unlikely to affect real estate development costs.

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. No small business is likely to incur compliance costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small business is likely to incur compliance costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No business is likely to incur compliance costs on account of these proposed regulatory changes.

Localities. No locality is likely to be adversely affected by these proposed regulatory changes.

Other Entities. No other entities are likely to suffer any adverse impact on account of this proposed regulation.

¹ These are Virginia Information Technology Agency (VITA) information security standards.

² For instance, mental health care providers who contract with DJJ would be authorized to access the records of their clients.

³ These standards and a relevant glossary can be accessed at: <http://vita.virginia.gov/library/default.aspx?id=537>

Agency's Response to Economic Impact Analysis: The Board of Juvenile Justice has reviewed the Department of Planning and Budget's economic impact analysis. The agency is in agreement with the analysis.

Summary:

The proposed amendments include (i) requiring background checks for those individuals who will have access to juvenile record information, (ii) replacing references to Department of Juvenile Justice data policies with references to the Information Technology Resource Management standards, which are the technology standards for all executive agencies of the Commonwealth, (iii) removing outdated terms and requirements, and (iv) clarifying processes that were previously vague.

**Part I
General Provisions**

6VAC35-160-10. Definitions.

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

"Access" means the ability directly to obtain information concerning an individual juvenile contained in manual or automated files.

"Commonwealth of Virginia Information Technology Resource Management Standards" or "COV ITRM Standards" means the information technology standards

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applicable to all executive branch agencies that manage, develop, purchase, and use information technology resources in the Commonwealth of Virginia.

"Data owner" means a Department of Juvenile Justice employee who is responsible for the policy and practice decisions regarding data as identified by COV ITRM Standard Security (SEC) 501-08.

"Department" means the Department of Juvenile Justice.

"Destroy" means to totally eliminate and eradicate by various methods, including, ~~but not limited to,~~ shredding, incinerating, or pulping.

"Dissemination" means any transfer of juvenile record information, whether orally, in writing, or by electronic means to any person other than an employee of a participating agency who ~~has a right to the~~ is authorized to receive the information under § 16.1-300 of the Code of Virginia and who is not barred from receiving the information by other applicable law.

"Expunge" means to destroy all records concerning an individual juvenile, or all personal identifying information related to an individual juvenile that is included in aggregated files and databases, in accordance with a court order or the Code of Virginia.

"Juvenile record information" means any information in the possession of a participating agency pertaining to the case of a juvenile who is or has been the subject of an action by an intake officer as provided by § 16.1-260 of the Code of Virginia, as well as to personal identifying information concerning such a juvenile in any database or other aggregated compilation of records. The term does not apply to statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

"Need to know" means the principle that a user should access only the specific information necessary to perform a particular function in the exercise of his official duties. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access ~~on a need to know basis~~ only necessary to perform official job duties and responsibilities.

"Participating agency" means the ~~Department of Juvenile Justice department,~~ including state-operated court service units, ~~or;~~ any locally operated court service unit, secure juvenile detention home, center, or juvenile group home or emergency shelter; or any public agency, child welfare agency, private organization, facility, or person who is treating or providing services to a child pursuant to a contract with the department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia, that is approved by the department to have direct access to juvenile record information through the ~~Virginia Juvenile Justice Information System VJJIS~~ VJJIS or any of its

component or derivative information systems. The term "participating agency" does not include any court.

"Remote access" means a connection to the department's systems from a remote location other than a department facility.

"Telecommunication connection" means the infrastructure used to establish a remote access to department information technology systems.

"Virginia Juvenile Justice Information System-(VJIS)" or "VJJIS" means the equipment, facilities, agreements and procedures used to collect, process, preserve or disseminate juvenile record information in accordance with § 16.1-224 or § 16.1-300 of the Code of Virginia. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

~~"VJJIS functional administrator" means a Department of Juvenile Justice employee who is responsible for overseeing the operation of a specific component of the Virginia Juvenile Justice Information System. Such persons are sometimes referred to as "functional proponents" of particular information reporting systems. The functional administrator is not to be confused with the department's overall administrator of the VJJIS.~~

Part II

Participating Agencies in the ~~Virginia Juvenile Justice Information System VJJIS~~ VJJIS

6VAC35-160-30. Designation as a participating agency.

A. The department, including its central administration, department-operated facilities, and state-operated court service units, is considered a single participating agency for purposes of this regulation.

B. Locally operated court services units, and secure juvenile detention homes and boot camps as defined in § 16.1-228 of the Code of Virginia centers shall be participating agencies in the ~~Virginia Juvenile Justice Information System VJJIS.~~

C. Any other agency that is eligible to receive juvenile record information under § 16.1-300 of the Code of Virginia may apply to the department for status as a participating agency.

6VAC35-160-40. Signed memorandum of agreement and nondisclosure agreement required.

The department shall develop a ~~written~~ memorandum of agreement and a nondisclosure agreement with each ~~other~~ participating agency delineating the participating agency's access to and responsibility for information contained in the ~~Virginia Juvenile Justice Information System VJJIS.~~

6VAC35-160-50. Data submissions.

A. All participating agencies shall submit data and other information as required by department ~~policy~~ procedures to ensure that juvenile record information is complete, accurate, current, and consistent.

B. Administrators of participating agencies are responsible for ensuring that entries into the ~~juvenile justice information system~~ VJJIS are accurate, timely, and in a form prescribed by the department.

C. All information entered into the ~~Virginia Juvenile Justice Information System~~ VJJIS shall become part of a juvenile's record and shall be subject to the confidentiality provisions of § 16.1-300 of the Code of Virginia.

6VAC35-160-60. Access provided to participating agencies.

A. In accordance with ~~policies~~ statutes, regulations, and procedures governing confidentiality of information and system security, the department may limit or expand the scope of access granted to participating agencies.

B. When individuals or participating agencies are providing treatment or rehabilitative services to a juvenile as part of an agreement with the department, their access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.

C. An individual's juvenile record information shall be made available only to participating agencies currently supervising or providing services to the juvenile, and only upon presentation of the unique identifying number assigned to the juvenile. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.

6VAC35-160-70. Designation of authorized individuals.

A. Each participating agency shall determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities and as documented in the employee work profile.

B. ~~In accordance with applicable law and regulations, the~~ The department ~~may~~ shall require a background check of any individual who will be given access to the VJJIS system through any participating agency. The department may deny access to any person based on the results of such background investigation or due to the person's violation of the provisions of ~~these regulations~~ this chapter or other security requirements established for the collection, storage, or dissemination of juvenile record information.

C. Only authorized ~~employees~~ individuals shall have direct access to juvenile record information.

D. Use of juvenile record information by an unauthorized ~~employee~~ individual, or for a purpose or activity other than one for which the person is authorized to receive juvenile record information, ~~will~~ shall be considered an unauthorized dissemination.

E. Persons who are given access to juvenile record information shall be required to sign an ~~agreement~~

information security agreement in accordance with department procedure stating that they will use and disseminate the information only in compliance with law and ~~these regulations, this chapter~~ and that they understand that there are criminal and civil penalties for unauthorized dissemination.

6VAC35-160-90. Security of physical records.

A. A participating agency that possesses physical records or files containing juvenile record information shall institute procedures to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

B. Only authorized persons ~~who are clearly identified~~ shall have access to areas where juvenile record information is collected, stored, processed, or disseminated. Locks, guards, or other appropriate means shall be used to control access.

6VAC35-160-100. Requirements when records are automated.

Participating agencies having automated juvenile record information files shall:

1. Designate a ~~system administrator~~ data owner to maintain and control authorized user accounts, system management, and the implementation of security measures;
- ~~2. Maintain "backup" copies of juvenile record information, preferably off site;~~
- ~~3. Develop a disaster recovery plan, which shall be available for inspection and review by the department;~~
- ~~4. Carefully control system specifications and documentation to prevent unauthorized access and dissemination;~~ 2. Develop and implement a logical access procedure to prevent unauthorized access and dissemination; and
- ~~5. 3. Develop procedures for discarding old computers to ensure that information contained on those computers is not available to unauthorized persons. All data must be completely erased or otherwise made unreadable in accordance with COV ITRM Standard SEC 514-04, Removal of Commonwealth Data from Electronic Media Standard, or any successor COV ITRM standard that addresses the removal of Commonwealth data from electronic media.~~

6VAC35-160-110. Access controls for computer security.

A. Where juvenile record information is computerized, logical access controls shall be put in place to ensure that records can be queried, updated, or destroyed only from approved system user accounts. Industry standard levels of encryption shall be required to protect ~~all~~ confidential juvenile record information moving through any network.

B. The logical access controls ~~described in subsection A of this section~~ shall be known only to the employees of the participating agency who are responsible for control of the

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juvenile record information system or to individuals and agencies operating under a specific agreement with the participating agency to provide such security programs. The access controls shall be kept ~~under maximum security conditions~~ secure.

C. Computer operations, whether dedicated or shared, that support juvenile record information shall operate in accordance with procedures developed or approved by the department.

D. Juvenile record information shall be stored ~~by the computer~~ in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion except via an approved system user account.

6VAC35-160-130. Security of telecommunications.

A. ~~Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the~~ The department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons. Industry standard levels of encryption shall be required to protect all juvenile record information moving through any network.

B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be secured during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information by implementing a screen saver lockout period after a maximum of 15 minutes of inactivity for devices as required by COV ITRM Standards SEC 501-09 or any successor COV ITRM Standard that addresses information security. In addition, appropriate identification of the remote access device operator shall be required.

C. ~~Telecommunications facilities~~ The telecommunications connection used in connection with the remote access device shall also be secured. ~~The telecommunications facilities~~ Telecommunication connections shall be reasonably protected from possible tampering or tapping.

6VAC35-160-150. Correcting errors.

Participating agencies shall immediately notify the appropriate ~~VJIS functional administrator~~ data owner when it is found that incorrect information has been entered into the ~~juvenile justice information system VJIS~~. The ~~VJIS functional administrator~~ data owner will make arrangements to correct the information as soon as practicable in accordance with department procedures.

6VAC35-160-170. Information to be disseminated only in accordance with law applicable statutes and regulation regulations.

A. In accordance with § 16.1-223 of the Code of Virginia, data stored in the ~~Virginia Juvenile Justice Information System VJIS~~ shall be confidential. Information from such data that identifies an individual juvenile may be released only in accordance with § 16.1-300 of the Code of Virginia, applicable federal law, and this ~~regulation~~ chapter.

B. Unauthorized dissemination of juvenile record information will ~~result in~~ subject the disseminator's being subject disseminator to the administrative sanctions described in 6VAC35-160-380. Unlawful dissemination also may be prosecuted as a Class 3 misdemeanor under § 16.1-309 of the Code of Virginia or as a Class 2 misdemeanor under § 16.1-225 of the Code of Virginia.

C. Additional disclosure limitations are provided in ~~the Health Insurance Portability and Accountability Act (42 USC §§ 1320d-5 and 1320d-6)~~ and the federal substance abuse law (42 USC § 290dd2(f)).

6VAC35-160-180. Fees.

Participating agencies may charge a reasonable fee for search and copying time expended when an individual or a nonparticipating agency requests juvenile record information. The participating agency shall inform the requester of the fees to be charged, and shall obtain written agreement from the requester to pay such costs prior to initiating the search for requested information. Any release shall be in accordance with applicable statutes and regulations.

6VAC35-160-210. Determining requestor's eligibility to receive the information.

A. Upon receipt of a request for juvenile record information, an appropriately designated person shall determine whether the requesting agency or individual is eligible to receive juvenile record information as provided in § 16.1-300 of the Code of Virginia, federal law, and this ~~regulation~~ chapter.

B. The determination as to whether a person, agency or institution has a "legitimate interest" in a juvenile's case shall be based on the criteria specified in subdivision A 7 of § 16.1-300 A-7 of the Code of Virginia.

C. When there is a request to disseminate health records or substance abuse treatment records, the person responding to the request shall determine whether the requested information is protected by ~~the Health Insurance Portability and Accountability Act of 1996~~ or by the federal law on substance abuse treatment records (42 USC § 290dd-2 and 42 CFR Part 2), and may consult with designated department personnel in making this determination. Health records and substance abuse treatment records shall be disseminated only in strict compliance with the applicable federal statutory requirements, the Code of Virginia, and this chapter.

6VAC35-160-220. Responding to requests.

A. Once it is determined that a requestor is entitled to juvenile record information, a designated individual shall inform the requestor of the procedures for reviewing the juvenile record information, including the general restrictions on the use of the data, when the record will be available, and any costs that may be involved.

B. When the request for juvenile record information is made by an individual's parent, guardian, legal custodian or other person standing in loco parentis, the request shall be referred to designated personnel of the department. (See 6VAC35-160-230.)

~~C. Before beginning the search for the requested juvenile record information, a designated individual shall inform the requestor of any fees that will be charged pursuant to 6VAC35-160-180 and shall obtain the consent of the requestor to pay any charges associated with providing the requested information.~~

~~D. C. All records containing sensitive data (e.g., name, date of birth, social security number, or address) shall be encrypted prior to electronic dissemination.~~ Except as provided in subsection B of this section, requested records shall be provided as soon as practicable, but in any case within seven 10 business days unless compliance with other applicable regulations requires a longer response time.

~~E. D.~~ If the request for information is made to a participating agency and the participating agency does not have access to the particular information requested, the requestor shall be ~~so~~ notified and shall be told how to request the information from the appropriate source, if known.

~~F. E.~~ Personnel of the participating agency shall provide reasonable assistance to the individual or his attorney to help understand the record.

~~G. F.~~ The person releasing the record shall also inform the individual of his right to challenge the record as provided in 6VAC35-160-280.

~~H. G.~~ If no record can be found, a statement shall be furnished to this effect.

6VAC35-160-260. Reporting unauthorized disseminations.

A. Participating agencies shall notify the department when they observe any violations of the ~~above~~ dissemination regulations contained in this part. The department ~~will~~ shall investigate and respond to the violation as provided in law and this chapter.

B. A participating agency that knowingly fails to report a violation may be subject to an immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

Part IV
Challenge ~~To~~ and Correction of Juvenile Record
Information

6VAC35-160-280. Challenge.

A. Individuals, or persons acting on an individual's behalf as provided for by law, may challenge their own juvenile record information by completing documentation provided by the department and forwarding it to the ~~functional proponent data owner~~ functional proponent data owner who is responsible for the applicable component of the ~~the Virginia Juvenile Justice Information System VJJIS~~ VJJIS as prescribed in department procedures.

B. When a record that is maintained by the VJJIS is challenged, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity to ~~make~~ provide a brief written statement describing how the information contained in the record is alleged to be inaccurate. When a challenged record is disseminated while under challenge, the record shall carry both the flagged message and the individual's statement, if one has been provided.

C. The ~~VJJIS functional administrator data owner~~ functional administrator data owner or designee shall examine the individual's record to determine if a data entry error was made. If a data entry error is not obvious, the ~~VJJIS functional administrator data owner~~ functional administrator data owner shall send a copy of the challenge form and any relevant information to all agencies that could have originated the information under challenge, and shall ask them to examine their files to determine the validity of the challenge.

D. The participating agencies shall examine their source data, the contents of the challenge, and information supplied by the VJJIS for any discrepancies or errors, and shall advise the ~~VJJIS functional administrator data owner~~ functional administrator data owner of the results of the examination.

E. If a modification of a VJJIS record is required, the ~~VJJIS functional administrator data owner~~ functional administrator data owner shall ensure that the required change is made and shall notify all participating agencies that were asked to examine their records in connection with the challenge.

F. Participating agencies that, pursuant to 6VAC35-160-220, have disseminated an erroneous or incomplete record shall in turn notify all entities that have received the erroneous juvenile record information as recorded on the agency's dissemination log.

G. The participating agency that received the challenge shall notify the individual or person acting on the individual's behalf of the results of the challenge and the right to request an administrative review and appeal those results.

6VAC35-160-290. Administrative review of challenge results.

A. If not satisfied with the results of the challenge, the individual or those acting on his behalf may, within 30 calendar days, request in writing an administrative review of

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the challenge by the ~~Director~~ director of the ~~Department of Juvenile Justice~~ department.

B. Within 30 days of receiving the written request for the administrative review, the ~~Director~~ director of the ~~Department of Juvenile Justice~~ department, or a designee who is not the ~~VJJIS functional administrator~~ data owner who responded to the challenge, shall review the challenge, the findings of the review, and the action taken by the ~~VJJIS functional administrator~~ data owner. If the administrative review supports correction of the juvenile record information, the correction shall be made as prescribed ~~above~~ in this section.

6VAC35-160-300. Removal of a challenge designation.

When ~~juvenile~~ the challenge to the juvenile's record information is determined to be correct ~~has been resolved~~, either as a result of a challenge or an administrative review of the challenge, the ~~VJJIS functional administrator~~ data owner shall notify the affected participating agencies to remove the challenge designation from their files.

Part V Expungement

6VAC35-160-310. Expungement requirements.

When a court orders or law requires the expungement of an individual's juvenile records, all records and personal identifying information associated with the expungement order shall be destroyed in accordance with the court order or statutory requirement. Nonidentifying information may be kept in databases or other aggregated files for statistical purposes.

6VAC35-160-320. Notification to participating agencies.

The ~~VJJIS functional administrator~~ data owner shall notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged. The notification shall include a copy of the applicable court order, along with notice of the penalties imposed by law for disclosure of such personal identifying information (see § 16.1-309 of the Code of Virginia).

6VAC35-160-330. Procedures for expunging juvenile record information.

A. Paper versions of records that have been ordered expunged shall be destroyed ~~by shredding, incinerating, pulping, or otherwise totally eradicating the record~~.

B. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of any equipment or software that is part of the ~~Virginia Juvenile Justice Information System~~ VJJIS and in accordance with the ITRM SEC 514-03 Removal of Electronic Data from Electronic Media standard.

C. If personal identifying information concerning the subject individual is included in records that are not ordered expunged, the personal identifying information relating to the individual whose records have been ordered expunged shall

be obliterated on the original, or a new document shall be created eliminating the personal identifying references to the individual whose record has been ordered expunged.

6VAC35-160-340. Confirmation notice required to ~~VJJIS functional administrator~~ data owner.

Within 30 calendar days of receiving expungement instructions from the ~~VJJIS functional administrator~~ data owner, the participating agency shall expunge the juvenile record information in accordance with 6VAC35-160-330 and shall notify the ~~VJJIS functional administrator~~ data owner when the records have been expunged. The notification to the ~~VJJIS functional administrator~~ data owner shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records ~~where~~ were expunged.

6VAC35-160-350. Expungement order received directly by participating agency.

When a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order in accordance with 6VAC35-160-330 and shall notify the ~~VJJIS functional administrator~~ data owner of the court-ordered expungement. The ~~VJJIS functional administrator~~ data owner, upon receipt of such notification, ~~obtain a copy of the order from the appropriate court~~ shall contact the appropriate court and determine the validity of the notification, as applicable.

Part VI Disposition of Records in the Virginia Juvenile Justice Information System

6VAC35-160-355. Record retention.

All records in the ~~Virginia Juvenile Justice Information System~~ VJJIS shall be retained and disposed of in accordance with the applicable records retention schedules approved by the Library of Virginia. When a participating agency or a unit of a participating agency disposes of records in the physical possession of the participating agency or the unit of a participating agency, the person who disposes of such records shall notify the ~~VJJIS functional administrator~~ data owner to remove that same information from VJJIS.

Part VII Enforcement

6VAC35-160-360. Oversight by the ~~Department of Juvenile Justice~~ department.

A. The ~~Department of Juvenile Justice~~ department shall have the responsibility for monitoring compliance with this chapter and for taking enforcement action as provided in this chapter or ~~by law~~ applicable state and federal statutes and regulations.

B. The department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems, or procedures ~~established pursuant to~~ required by this chapter.

6VAC35-160-390. Annual report to the board. (Repealed.)

~~The department shall annually report to the board on the status of the Juvenile Justice Information System, including a summary of (i) any known security breaches and corrective actions taken; (ii) any audits conducted, whether random or for cause; and (iii) any challenges received alleging erroneous information and the outcome of any investigation in response to such a challenge.~~

VA.R. Doc. No. R16-4311; Filed December 15, 2016, 4:02 p.m.

TITLE 7. ECONOMIC DEVELOPMENT

DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

Final Regulation

REGISTRAR'S NOTICE: The Department of Small Business and Supplier Diversity is claiming an exemption from the Administrative Process Act in accordance with subdivision 8 of § 2.2-1606 of the Code of Virginia, which exempts regulations implementing certification programs for small, women-owned, and minority-owned businesses and employment services organizations from the Administrative Process Act pursuant to subdivision B 2 of § 2.2-4002 of the Code of Virginia.

Title of Regulation: 7VAC13-20. Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses (amending 7VAC13-20-10, 7VAC13-20-150, 7VAC13-20-190, 7VAC13-20-220).

Statutory Authority: § 2.2-1606 of the Code of Virginia.

Effective Date: February 8, 2017.

Agency Contact: Reba O'Connor, Regulatory Coordinator, Department of Small Business and Supplier Diversity, 101 North 14th Street, Richmond, VA 23219, telephone (804) 593-2005, or email reba.oconnor@sbsd.virginia.gov.

Summary:

The amendments (i) add a definition of "gross receipts," (ii) remove incorrect language regarding application of the Administrative Process Act, and (iii) remove a provision prohibiting a business whose certification has been revoked from reapplying for certification after revocation.

7VAC13-20-10. Definitions.

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

"Affiliate" means a business that is connected in some way, whether financially or legally, to a business that has applied to the department for certification as a small, women-owned, or minority-owned business (see the federal Small Business

Administration regulations, 13 CFR Part 121). The following requirements, conditions, and factors are applicable:

1. Businesses are affiliates of each other when, either directly or indirectly:
 - a. One business controls or has the power to control the other;
 - b. A third party controls or has the power to control both;
 - c. An identity of interest between or among parties exists such that affiliation may be found; or
 - d. One business or company has ownership, direct or indirect, of 10% or more of the voting stock of another business. (See the Investment Company Act, 15 USC § 80a-2.)

2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the small, women-owned, or minority-owned business certification program.

"Agent" means a person that (i) has the authority to act on behalf of a principal in transactions with third parties; (ii) is subject to the principal's control; and (iii) does not have title to the principal's property.

"Appeal" means a written request by an applicant to reconsider a denial or revocation of certification.

"Applicant" means any business that applies to the department for certification or recertification as a small, women-owned, or minority-owned business.

"Application" means the documents the department requires the applicant to submit in the course of certification or recertification, including the application form the applicant submits under penalty of perjury, which may include any additional documentation that the department requests that the applicant submit, and any information or report that the department generates during or upon completion of an onsite visit.

"Broker" means a person who acts as an intermediary between a buyer and seller.

"Business" means any legal entity organized in the United States or a commonwealth or territory of the United States that regularly engages in lawful commercial transactions for profit.

"Certification" means the same as that term is defined in § 2.2-1604 of the Code of Virginia.

"Certified" means the status accorded to an applicant upon the department's determination that the applicant has satisfied the requirements for certification as a small, women-owned, or minority-owned business.

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"Control" means the power to direct the operation and management of a business as evidenced through governance documents and actual day-to-day operation.

"Corporation" means a legal entity that is incorporated under the law of a state, the United States, or a commonwealth or territory of the United States.

"Day" means any day except Saturday, Sunday, and legal state holidays unless otherwise noted.

"Dealer" means a person or business that has the exclusive or nonexclusive authority to sell specified goods or services on behalf of another business.

"Department" means the Department of Small Business and Supplier Diversity.

"Director" means the Director of the Department of Small Business and Supplier Diversity or his designee.

"Expiration" means the date on which the director specifies that a certified business will cease to be certified.

"Franchise" means a contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area.

"Franchisee" means a business or group of businesses established or operated under a franchise agreement.

"Gross receipts" means the amount reported as gross receipts of sales by the applicant on line 1 or 1(A) of the applicable federal income tax return as filed with the United States Internal Revenue Service.

"Individual" means a natural person.

"Joint venture" means a formal association of two or more persons or businesses for the purpose of carrying out a time-limited, single business enterprise for profit, in which the associated persons or businesses combine their property, capital, efforts, skills, or knowledge, and in which the associated persons or businesses exercise control and management and share in profits and losses in proportion to their contribution to the business enterprise.

"Limited liability company" means a specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.

"Manufacturer's representative" means an agent whose principal is a manufacturer or group of manufacturers.

"Minority individual" means the same as that term is defined in § 2.2-1604 of the Code of Virginia.

"Onsite visit" means a visit by department representatives to the applicant's physical place of business to verify the applicant's representations submitted to the department in the course of certification or recertification.

"Ownership" means an equity, a partnership, or a membership interest in a business.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit.

"Person" means a natural person or a business.

"Principal" means a person who contracts with another to act on the contracting person's behalf subject to that person's control.

"Principal place of business" means the physical business location where the business maintains its headquarters, where the business's books and records are kept, and where the natural persons who direct, control, and manage the business's day-to-day operations are located. If the offices from which management is directed and where the business records are kept are in different locations, the department will determine the principal place of business.

"Pro forma" means as a matter of form or assumed information.

"Recertification" means the process by which a business applies to the department for renewed or continued status as a certified business.

"Record" means the materials submitted in support of an application for certification or recertification, which may include the application, supporting documentation, and additional materials obtained by the department in the course of the application, certification, or recertification process.

"Sole proprietorship" means a business whose assets are wholly owned by a single person.

"Virginia-based business" means a business that has its principal place of business in Virginia.

7VAC13-20-150. Procedures for initial certification.

A. Any business that meets the criteria for certification may file an official application with the department.

B. The application will be reviewed initially for completeness. The department may conduct an onsite visit of the business to obtain or clarify any information. The onsite visit may be scheduled or unannounced.

C. The department may request the applicant to provide additional information or documentation to provide clarification and substantiation of certain criteria or to resolve any ambiguities or inconsistencies in an application.

D. The department may impose a time limit in which the applicant must provide the requested information. A reasonable extension may be given by the department for good cause shown by the applicant. Requests for time extensions must be made to the department in writing and should specify the length of time for which the extension is being requested and the reasons for the request. Failure to provide such information or documentation shall render the application administratively closed.

E. After reviewing the application, the department shall issue either a notice of certification or a notice of denial of certification stating the reasons for denial ~~and offering the applicant the opportunity for an informal hearing pursuant to § 2.2-4019 of the Code of Virginia.~~

F. A business certified by the department under this section shall be certified for a period of three years unless (i) the

certification is revoked before the end of the three-year period, (ii) the business is no longer in business, or (iii) the business is no longer eligible as a small, women-owned, or minority-owned business.

G. The applicant shall be responsible for notifying the department immediately of any change in legal structure, ownership, control, management, or status of the business within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

H. It shall be the responsibility of the applicant, the certified business, or both to notify the department of any change of name, address, or contact information and to keep the department informed of the current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so within 30 calendar days of such change may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications, or correspondence based upon the certified business's failure to notify the department of any change of address or to provide correct address and contact information.

7VAC13-20-190. Notice of denial.

The department shall notify the applicant of the denial of its application for certification or recertification in writing no later than 15 days from the date of the decision by the department. The notice shall state the reasons for the denial of certification or recertification ~~and offer the applicant the opportunity to appeal the decision as provided in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

7VAC13-20-220. Reapplication.

A. A business whose application for certification has been denied may reapply for the same category of certification 12 months after the date on which the business receives the notice of denial if no appeal is filed or 12 months after the appeal is exhausted. An applicant denied certification as a women-owned or minority-owned business may reapply for certification as a small business without delay if otherwise eligible.

B. The applicant may request a waiver of the 12-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

~~C. A business whose certification has been revoked may not reapply for certification in the same classification.~~

VA.R. Doc. No. R17-4995; Filed December 8, 2016, 3:50 p.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

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

Titles of Regulations: **9VAC5-20. General Provisions (Rev. H16) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. H16) (amending 9VAC5-40-5800; adding 9VAC5-40-5925 through 9VAC5-40-5990).

Statutory Authority:

9VAC5-20: § 10.1-1308 of the Code of Virginia; §§ 108, 109, and 302 of the federal Clean Air Act; 40 CFR Parts 50, 53, and 58.

9VAC5-40: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: February 22, 2017.

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

Summary:

Currently, air pollution from landfills is regulated in Virginia under Article 43, Emission Standards for Municipal Solid Waste Landfills (9VAC5-40-5800 et seq.). Article 43 was originally designed to control two separate pollutants: (i) ozone in the Northern Virginia ozone nonattainment area as required by § 110 of the Clean Air Act and implemented by 40 CFR Part 51 and (ii) nonmethane organic compounds as required by § 111 of the federal Clean Air Act and implemented by Subpart Cc of 40 CFR Part 60, which is applicable statewide. On August 29, 2016 (81 FR 59276), the U.S. Environmental Protection Agency promulgated new emissions guidelines for municipal solid waste landfills as Subpart Cf of 40 CFR Part 60. The amendments were made to reduce emissions of landfill gas, which contains both nonmethane organic compounds and methane. To adopt the requirements of Subpart Cf while maintaining the state-only requirements specific to the Northern Virginia ozone nonattainment area, a new Article 43.1 is being promulgated. This action will enable the adoption of the

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new statewide standards without affecting the more restrictive requirements of Article 43 applicable to the nonattainment area.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (2016) in effect July 1, 2016. For the purposes of Article 43.1 (9VAC5-40-5925 et seq.) of 9VAC5-40 (Existing Stationary Sources), the EPA regulations promulgated at Subpart Cf (40 CFR 60.30f et seq., Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) of 40 CFR Part 60, as published in the Federal Register of August 29, 2016 (81 FR 59276) and effective on October 28, 2016, is the version incorporated by reference into this article and Article 43.1. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
 - (1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

(10) 40 CFR Part 72 -- Permits Regulation.

(11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75 -- Continuous Emission Monitoring.

(14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.

(15) 40 CFR Part 77 -- Excess Emissions.

(16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.

(17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.

(18) 49 CFR Part 172 -- Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this section, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this section, may be obtained from U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this section may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the

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document identified in subdivision E 2 a (3) of this section are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.

3. United States government.

a. The following document from the United States government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; telephone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005; telephone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical

- Agents and Biological Exposure Indices (ACGIH Handbook).
- b. Copies may be obtained from ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, OH 45240; telephone (513) 742-2020.
7. National Fire Prevention Association (NFPA).
- a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.
- (1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.
- (2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.
- (3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.
- b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; telephone (617) 770-3000.
8. American Society of Mechanical Engineers (ASME).
- a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.
- (1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).
- (2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).
- (3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.
- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016; telephone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from American Hospital Association, One North Franklin, Chicago, IL 60606; telephone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, telephone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).
- (4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.
- b. Copies may be obtained from South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, telephone (909) 396-2000.
12. California Air Resources Board (CARB).
- a. The following documents from the California Air Resources Board are incorporated herein by reference:
- (1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).
- (4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).
- (5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive

Regulations

Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, telephone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; telephone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of

Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. American Architectural Manufacturers Association (AAMA).

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; telephone (847) 303-5774.

Article 43

Emission Standards for Municipal Solid Waste Landfills (Rule 4-43)

9VAC5-40-5800. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is each municipal solid waste (MSW) landfill which commenced construction, reconstruction, or modification before May 30, 1991.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. For purposes of obtaining a federal operating permit, the owner of an MSW landfill subject to this article with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain a federal operating permit for the landfill, unless the landfill is otherwise subject to federal operating permit requirements. For purposes of submitting a timely application for a federal operating permit, the owner of an MSW landfill subject to this article with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the board's program under § 111(d) of the federal Clean Air Act, and otherwise not subject to federal operating permit requirements, shall submit an operating permit application as provided in 9VAC5-80-80 C, even if the design capacity report is submitted earlier.

D. When an MSW landfill subject to this article becomes closed, the owner is no longer subject to the requirement to maintain a federal operating permit for the landfill if the

landfill is not otherwise subject to federal operating permit requirements and if either of the following conditions is met:

1. The landfill was never subject to the requirement for a control system under 9VAC5-40-5820 C 2; or
2. The owner meets the conditions for control system removal specified in 9VAC5-40-5820 C 2 e.

E. Activities required by or conducted pursuant to a CERCLA, RCRA, or board remedial action are not considered construction, reconstruction, or modification for the purposes of this article.

F. Each affected facility with a design capacity greater than 2.5 million megagrams or 2.5 million cubic meters shall demonstrate compliance with this article by demonstrating compliance with the provisions of Article 43.1 (9VAC5-40-5925 et seq.) of this chapter.

Article 43.1

Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014 (Rule 4-43.1)

9VAC5-40-5925. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is each existing municipal solid waste (MSW) landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and as further defined in Subpart Cf (40 CFR 60.30f et seq.) of 40 CFR Part 60.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The owner of an MSW landfill shall obtain a federal operating permit as required by 40 CFR 60.31f(c). When an MSW landfill is closed, the owner is no longer subject to the requirement to maintain a federal operating permit if the conditions of 40 CFR 60.31f(d) are met.

D. For each MSW landfill in the closed landfill subcategory, the reporting provisions of 9VAC5-40-5975 may be met as provided in 40 CFR 60.31f(e).

9VAC5-40-5930. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms shall have the meanings given them in 40 CFR 60.41f, except for the following:

"Administrator" means the board.

9VAC5-40-5935. Emission limits and emission standards.

A. The owner of each MSW landfill having a design capacity greater than or equal to 2.5 million megagrams by

mass and 2.5 million cubic meters by volume that meets the conditions of 40 CFR 60.33f(a)(1) through (4) shall collect and control MSW landfill emissions in accordance with the provisions of 40 CFR 60.33f(b)(1) through (3), and 40 CFR 60.33f(c)(1) through (4) except as provided in 40 CFR 60.24.

B. The owner of each MSW landfill with a design capacity less than 2.5 million megagrams and 2.5 million cubic meters shall submit an initial design capacity report to the administrator as provided in 40 CFR 60.38f(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report fulfills the requirements of this article except as provided in 40 CFR 60.33f(d)(1) and (2).

C. The owner of each MSW landfill with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters shall either install a collection and control system as provided in subsection A of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in 40 CFR 60.35f(a). The NMOC emission rate shall be recalculated annually, except as provided in 40 CFR 60.38f(c)(3). The owner shall follow the procedures specified in 40 CFR 60.33f(e)(1) through (3).

D. The owner of each MSW landfill may cap, remove, or decommission the collection and control system used to comply with subsection A of this section if the criteria of 40 CFR 60.33f(f)(1) through (4) are met.

E. An active collection system used to comply with subsection A of this section shall meet the specifications for active collection system of 40 CFR 60.40f(a) through (c).

9VAC5-40-5940. Standard for visible emissions and fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5-40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply, with the exception of 9VAC5-40-80 (Standard for visible emissions), 9VAC5-40-100 (Monitoring), 9VAC5-40-110 (Test methods and procedures), and 9VAC5-40-120 (Waivers).

9VAC5-40-5945. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of 9VAC5-40 (Emission Standards for Odor, Rule 4-2) apply.

9VAC5-40-5950. Compliance schedule.

The provisions of 40 CFR 60.32f apply.

9VAC5-40-5955. Operating requirements.

The owner of an MSW landfill with a gas collection and control system used to comply with the provisions of 40 CFR 60.33f(b) and (c) shall meet the requirements of 40 CFR 60.34f(a) through (g).

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9VAC5-40-5960. Compliance.

A. With regard to the emissions limits in 9VAC5-40-5940 and 9VAC5-40-5945, the provisions of 9VAC5-40-20 (Compliance) apply.

B. With regard to the emission limits in 9VAC5-40-5935 and 9VAC5-40-5955, the following provisions apply:

1. 9VAC5-40-20 B, C, D, and E;
2. To the extent specified in the federal regulations cited in subdivision 3 of this subsection, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11, and 40 CFR 60.13; and
3. 40 CFR 60.32f and 40 CFR 60.36f(a) through (e).

9VAC5-40-5965. Test methods and procedures, monitoring of operations.

A. With regard to the emissions standards in 9VAC5-40-5940 and 9VAC5-40-5945, the provisions of 9VAC5-40-30 (Emission testing) and 9VAC5-40-40 (Monitoring) apply.

B. With regard to the emission limits in 9VAC5-40-5935 and 9VAC5-40-5955, the following provisions apply:

1. 9VAC5-40-30 D and G;
2. 9VAC5-40-40 A and F;
3. 40 CFR 60.8(b) through (f), with the exception of paragraph (a);
4. 40 CFR 60.13; and
5. 40 CFR 60.35f(a) through (e), and 40 CFR 60.37f(a) through (h), except as provided in 40 CFR 60.38f(d)(2).

9VAC5-40-5970. Reporting and recordkeeping.

A. With regard to the emissions standards in 9VAC5-40-5940 and 9VAC5-40-5945, the provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

B. With regard to the emission limits in 9VAC5-40-5935 and 9VAC5-40-5955, the following provisions apply:

1. 9VAC5-40-50 F and H;
2. 40 CFR 60.7; and
3. 40 CFR 60.38f(a) through (m) except as provided in 40 CFR 60.24 and 40 CFR 60.38f(d)(2), and 40 CFR 60.39f(a) through (j).

9VAC5-40-5975. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-5980. Facility and control equipment maintenance or malfunction.

A. With regard to the emissions standards in 9VAC5-40-5940 and 9VAC5-40-5945, the provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

B. With regard to the emission limits in 9VAC5-40-5935 and 9VAC5-40-5955, the following provisions apply:

1. 9VAC5-20-180 with the exception of subsections E, F, and G; and
2. 40 CFR 60.36f(e) and 40 CFR 60.37f(h).

9VAC5-40-5985. Other permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.
6. Operation of a facility.

9VAC5-40-5990. Documents incorporated by reference.

The U.S. Environmental Protection Agency regulations promulgated at Subpart Cf (40 CFR 60.30f et seq., Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) of 40 CFR Part 60 are incorporated by reference into this article. The specific version of the provisions incorporated by reference shall be that contained in the CFR in effect as specified in 9VAC5-20-21.

VA.R. Doc. No. R17-4894; Filed December 16, 2016, 10:51 a.m.

Final Regulation

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

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. J16) (amending 9VAC5-50-400, 9VAC5-50-410).**

9VAC5-60. Hazardous Air Pollutant Sources (Rev. J16) (amending 9VAC5-60-60, 9VAC5-60-70, 9VAC5-60-90, 9VAC5-60-100).

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

Effective Date: February 22, 2017.

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

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2016. The new standards in the federal regulations that are being incorporated into the regulations by reference include the following:

1. One new (Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015) source performance standard is not being incorporated at this time; this standard is listed with a note that enforcement of the standard rests with the Environmental Protection Agency. In addition, Subparts T, U, V, W, X, CCCC, and OOOO were amended. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. No new National Emissions Standards for Hazardous Air Pollutants (NESHAPs) are being incorporated; however, a number of typographical errors have been corrected under Subpart M. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. Three new maximum achievable control technology standards are being added: Subpart NN, Wool Fiberglass Manufacturing at Area Sources (40 CFR 63.880 through 40 CFR 63.899); Subpart JJJJ, Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 40 CFR 63.8515); and Subpart KKKK, Ceramics Manufacturing (40 CFR 63.8530 through 40 CFR 63.8665). In addition, Subparts AA, BB, CC, and DD are amended. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

Article 5

Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2015~~) (2016) in effect July 1, ~~2015~~ 2016. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil Fuel-Fired Steam Generators.

40 CFR 60.40 through 40 CFR 60.46

(fossil fuel-fired steam generating units of more than 250 million Btu per hour heat input rate and fossil fuel-fired and wood residue-fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units.

40 CFR 60.40Da through 40 CFR 60.52Da

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel), and for which construction, reconstruction, or modification is commenced after September 18, 1978)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

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Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994.

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996.

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996.

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.66

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart Ga - Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.

40 CFR 60.70a through 40 CFR 60.77a

(nitric acid production units producing weak nitric acid by either the pressure or atmospheric pressure process)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart Ja - Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007.

40 CFR 60.100a through 40 CFR 60.109a

(fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, including flares and process heaters, and sulfur recovery plants)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through ~~40 CFR 60.204~~ 40 CFR 60.205

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through ~~40 CFR 60.214~~ 40 CFR 60.215

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through ~~40 CFR 60.224~~ 40 CFR 60.225

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through ~~40 CFR 60.234~~ 40 CFR 60.235

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through ~~40 CFR 60.244~~ 40 CFR 60.245

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation and Processing Plants.

40 CFR 60.250 through 40 CFR 60.258

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart BBa - Kraft Pulp Mill Affected Sources for which Construction, Reconstruction, or Modification Commenced after May 23, 2013.

40 CFR 60.280a through 40 CFR 60.288a

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers, and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar

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- unloading stations, railcar loading stations, grain dryers, and all grain handling operations)
- Subpart EE - Surface Coating of Metal Furniture.
40 CFR 60.310 through 40 CFR 60.316
(metal furniture surface coating operations in which organic coatings are applied)
- Subpart FF - Reserved.
- Subpart GG - Stationary Gas Turbines.
40 CFR 60.330 through 40 CFR 60.335
(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)
- Subpart HH - Lime Manufacturing Plants.
40 CFR 60.340 through 40 CFR 60.344
(each rotary lime kiln)
- Subparts II through JJ - Reserved.
- Subpart KK - Lead-Acid Battery Manufacturing Plants.
40 CFR 60.370 through 40 CFR 60.374
(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)
- Subpart LL - Metallic Mineral Processing Plants.
40 CFR 60.380 through 40 CFR 60.386
(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)
- Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.
40 CFR 60.390 through 40 CFR 60.397
(prime coat operations, guide coat operations, and top-coat operations)
- Subpart NN - Phosphate Rock Plants.
40 CFR 60.400 through 40 CFR 60.404
(phosphate rock plants which have a maximum plant production capacity greater than four tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)
- Subpart OO - Reserved.
- Subpart PP - Ammonium Sulfate Manufacture.
40 CFR 60.420 through 40 CFR 60.424
(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)
- Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.
40 CFR 60.430 through 40 CFR 60.435
(publication rotogravure printing presses, except proof presses)
- Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.
40 CFR 60.440 through 40 CFR 60.447
(pressure sensitive tape and label material coating lines)
- Subpart SS - Industrial Surface Coating: Large Appliances.
40 CFR 60.450 through 40 CFR 60.456
(surface coating operations in large appliance coating lines)
- Subpart TT - Metal Coil Surface Coating.
40 CFR 60.460 through 40 CFR 60.466
(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)
- Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.
40 CFR 60.470 through 40 CFR 60.474
(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)
- Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after January 5, 1981, and on or before November 7, 2006.
40 CFR 60.480 through 40 CFR 60.489
(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)
- Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
40 CFR 60.480a through 40 CFR 60.489a

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - Reserved.

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - Reserved.

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - Reserved.

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after January 4, 1983, and on or before November 7, 2006.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after November 7, 2006.

40 CFR 60.590a through 40 CFR 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Sulfur Dioxide Emissions from Onshore Natural Gas Processing for which Construction,

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Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - Reserved.

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and Resource Conservation and Recovery Act (RCRA) Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators ~~for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001.~~

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for which Construction is Commenced after December 9, 2004, or for which Modification or Reconstruction is Commenced on or after June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart JJJJ - Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Subpart LLLL - Sewage Sludge Incineration Units.

40 CFR 60.4760 through 40 CFR 60.4925

(an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter, including the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, and bottom ash system; and all ash handling systems connected with the bottom ash handling system)

Subpart MMMM - Reserved.

Subpart NNNN - Reserved.

Subpart OOOO - Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification, or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015.

40 CFR 60.5360 through ~~40 CFR 60.5430~~ 40 CFR 60.5499

(facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, and storage vessels)

Subpart OOOOa - Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015.

40 CFR 60.5360a through 40 CFR 60.5499a

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart PPPP - Reserved.

Subpart QQQQ - New Residential Hydronic Heaters and Forced-Air Furnaces

40 CFR 60.5472 through 40 CFR 60.5483

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart RRRR - Reserved.

Subpart SSSS - Reserved.

Subpart TTTT - Reserved.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - Reserved.

Appendix F - Quality Assurance Procedures.

Appendix G - Not applicable.

Appendix H - Reserved.

Appendix I - Removable label and owner's manual.

Part II Emission Standards

Article 1

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in

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9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2015)~~ (2016) in effect July 1, ~~2015~~ 2016. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

9VAC5-60-70. Designated emission standards.

Subpart A—General Provisions.

40 CFR 61.01 through 40 CFR 61.03, 40 CFR 61.05 through 40 CFR 61.10, 40 CFR 61.12 through 40 CFR 61.15, and 40 CFR 61.19

(applicability, definitions, units and abbreviations, compliance, prohibited activities, determination of construction or modification, application for approval of construction or modification, approval of construction or modification, notification of startup, source reporting and waiver request, emission tests, monitoring, modification, and circumvention)

Subpart B—Radon Emissions from Underground Uranium Mines.

40 CFR 61.20 through 40 CFR 61.26

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart C—Beryllium.

40 CFR 61.30 through 40 CFR 61.34

Subpart D—Beryllium Rocket Motor Firing.

40 CFR 61.40 through 40 CFR 61.44

Subpart E—Mercury.

40 CFR 61.50 through 40 CFR 61.55

Subpart F—Vinyl Chloride.

40 CFR 61.60 through 40 CFR 61.71

Subpart G—(Reserved).

Subpart H—Emissions of Radionuclides Other than Radon from Department of Energy (DOE) Facilities.

40 CFR 61.90 through 40 CFR 61.97

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart I—Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission (NRC) and Federal Facilities Not Covered by Subpart H.

40 CFR 61.100 through 40 CFR 61.109

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart J—Equipment Leaks (Fugitive Emission Sources) of Benzene.

40 CFR 61.110 through 40 CFR 61.112

Subpart K—Radionuclide Emissions ~~From~~ from Elemental Phosphorus Plants.

40 CFR 61.120 through 40 CFR 61.127

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart L—Benzene Emissions ~~From~~ from Coke By-Product Recovery Plants.

40 CFR 61.130 through 40 CFR 61.139

Subpart M—Asbestos.

40 CFR 61.140 through 40 CFR 61.157

(NOTE: Under § 40.1-51.20 of the Code of Virginia, the Virginia Department of Labor and Industry also holds authority to enforce the following: 40 CFR 61.140, Applicability; 40 CFR 61.141, Definitions; ~~40 CFR Part 145~~ 40 CFR 61.145, Standard for demolition and renovation; 40 CFR 61.146, Standard for spraying; ~~60 CFR Part 148~~ 40 CFR 61.148, Standard for insulating materials; ~~60 CFR Part 150~~ 40 CFR 61.150, Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations except subsection (a)(4); and ~~40 CFR Part 154~~ 40 CFR 61.154, Standard for active waste disposal, except subsection (d); and ~~40 CFR Part 156~~ 40 CFR 61.156, Cross-reference to other asbestos regulations.)

Subpart N—Inorganic Arsenic Emissions from Glass Manufacturing Plants.

40 CFR 61.160 through 40 CFR 61.165

Subpart O—Inorganic Arsenic Emissions from Primary Copper Smelters.

40 CFR 61.170 through 40 CFR 61.177

Subpart P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

40 CFR 61.180 through 40 CFR 61.186

Subpart Q—Radon Emissions from Department of Energy Facilities.

40 CFR 61.190 through 40 CFR 61.193

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart R—Radon Emissions from Phosphogypsum Stacks.

40 CFR 61.200 through 40 CFR 61.205

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart S—(Reserved).

Subpart T—Radon Emissions from the Disposal of Uranium Mill Tailings.

40 CFR 61.220 through 40 CFR 61.225

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart U—(Reserved).

Subpart V—Equipment Leaks (Fugitive Emission Sources).

40 CFR 61.240 through 40 CFR 61.247

Subpart W—Radon Emissions from Operating Mill Tailings.

40 CFR 61.250 through 40 CFR 61.252

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart X—(Reserved).

Subpart Y—Benzene Emissions ~~From~~ from Benzene Storage Vessels.

40 CFR 61.270 through 40 CFR 61.277

Subpart Z—(Reserved).

Subpart AA—(Reserved).

Subpart BB—Benzene Emissions from Benzene Transfer Operations.

40 CFR 61.300 through 40 CFR 61.306

Subpart CC—(Reserved).

Subpart DD—(Reserved).

Subpart EE—(Reserved).

Subpart FF—Benzene Waste Operations.

40 CFR 61.340 through 40 CFR 61.358

Appendix A—Not applicable.

Appendix B—Test Methods.

(NOTE: Authority to enforce the following test methods is being retained by EPA and they are not incorporated by reference into the Regulations for the Control and Abatement of Air Pollution.)

Method 111—Determination of polonium-210 emissions from stationary sources. Method 114—Test methods for measuring radionuclide emissions from stationary sources.

Method 115—Monitoring for radon-222 emissions.

Appendix C—Quality assurance procedures.

Appendix D—Methods for estimating radionuclide emissions.

(NOTE: Authority to enforce the above methods is being retained by EPA and it is not incorporated by reference

into the Regulations for the Control and Abatement of Air Pollution.)

Appendix E—Compliance procedures methods for determining compliance with Subpart I.

(NOTE: Authority to enforce the above methods is being retained by EPA and it is not incorporated by reference into the Regulations for the Control and Abatement of Air Pollution.)

Article 2

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2015)~~ (2016) in effect July 1, 2015 2016. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

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Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants ~~From~~ from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchloroethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 60.552

(at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through ~~40 CFR 63.610~~ 40 CFR 63.611

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through ~~40 CFR 63.631~~ 40 CFR 63.632

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through ~~40 CFR 63.654~~ 40 CFR 63.671

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through ~~40 CFR 63.752~~ 40 CFR 63.759

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semicheical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - ~~Reserved~~ Wool Fiberglass Manufacturing at Area Sources.

40 CFR 63.880 through 40 CFR 63.899

(manufacture of wool fiberglass insulation materials composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located)

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

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(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that is used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH - Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one-piece and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

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Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA and are not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(industrial, commercial, and institutional boilers and process heaters)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

~~(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference~~

~~into these regulations. (facilities that manufacture brick, clay pipe, roof tile, extruded floor and wall tile, and other extruded, dimensional clay products, and typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes)~~

Subpart KKKKKK - Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

~~(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. (facilities that manufacture pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware, and typically process clay, shale, and various additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products)~~

Subpart LLLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PTTTT - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

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Subpart TTTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUUU - Coal-fired and Oil-fired Electric Utility Steam Generating Units.

40 CFR 63.9980 through 40 CFR 63.10042

(any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam, including fossil fuel-fired steam generators associated with integrated gasification combined cycle gas turbines and excluding nuclear steam generators, for the purpose of powering a generator to produce electricity or electricity and other thermal energy)

Subpart VVVVVV - Reserved.

Subpart WWWWWW - Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXXX - Reserved.

Subpart YYYYYY - Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZZ - Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA - Reserved.

Subpart BBBBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC - Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for

Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart IIIIII - Reserved.

Subpart JJJJJJ - Industrial, Commercial, and Institutional Boiler Area Sources.

40 CFR 63.11193 through 40 CFR 63.11226

(NOTE: Authority to enforce the above standard is being retained by EPA and is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW - Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 63.11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX - Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for

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Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart YYYYYYY - Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

(melting operations at aluminum, copper, and other nonferrous foundries, including the collection of induction, reverberatory, crucible, tower, or dry hearth furnaces used to melt metal ingot, alloyed ingot and/or metal scrap to produce molten metal that is poured into molds to make castings)

Subpart AAAAAAA - Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBB BBB - Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCC - Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting,

dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD - Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Subpart EEEEEEE - Gold Mine Ore Processing and Production Area Sources

40 CFR 63.11640 through 40 CFR 63.11653

(any industrial facility engaged in the processing of gold mine ore that uses any of the following processes: roasting operations, autoclaves, carbon kilns, preg tanks, electrowinning, mercury retorts, or melt furnaces)

Subpart FFFFFFF - Reserved.

Subpart GGGGGGG - Reserved.

Subpart HHHHHHH - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.11860 through 40 CFR 63.12000

(facility-wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R17-4898; Filed December 16, 2016, 10:48 a.m.

STATE WATER CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and

25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-194. General Permit for Vehicle Wash Facilities and Laundry Facilities (amending 9VAC25-194-10, 9VAC25-194-15, 9VAC25-194-40 through 9VAC25-194-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Hearing Information:

February 9, 2017 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 24060

Public Comment Deadline: March 10, 2017.

Agency Contact: Eleanore Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email eleanor.daub@deq.virginia.gov.

Announcement of Periodic Review and Small Business Impact Review: Pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, 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.

Summary:

The regulatory action amends and reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit that expires October 15, 2017. The general permit contains limitations and monitoring requirements for point source discharge of wastewaters from vehicle wash facilities and laundry facilities. The general permit regulation is being reissued to continue making it available for these facilities to continue to discharge.

Substantive changes (i) clarify that vehicle washing includes towed small recreational boats (less than 8.6 feet beam and 25 feet in length); (ii) require permittees to

notify the municipal separate storm sewer system (MS4) owners before obtaining coverage under the general permit if their discharges are into an MS4; (iii) clarify that inspections of the effluent include sheen, floating solids, visible foam, examination date and time, and examination personnel; and (iv) require the effluent to be free of sheens.

CHAPTER 194

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR VEHICLE WASH FACILITIES AND LAUNDRY FACILITIES

9VAC25-194-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9VAC25-31-10 ~~et seq.~~ (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Construction equipment" means trenchers, backhoes, boring equipment, bulldozers, and any other piece of earthmoving equipment; equipment used in the paving industry; and dump trucks.

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

"Laundry" means any self-service facility where the washing of clothes is conducted as designated by SIC 7215. It does not include facilities that engage in dry cleaning.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Vehicle maintenance" means vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication.

"Vehicle wash" means any fixed or mobile facility where the manual, automatic, or self-service exterior washing of vehicles is conducted. It includes, but is not limited to, automobiles, trucks (except below), motor homes, buses, motorcycles, ambulances, fire trucks, tractor trailers, and other devices that convey passengers or goods on streets or highways. This definition also includes golf course equipment, ~~and~~ lawn maintenance equipment, ~~and~~ recreational boats less than 8.6 feet beam and 25 feet in length towed by a vehicle. It also includes any incidental floor cleaning wash waters associated with facilities that wash vehicles where the floor wash water also passes through the vehicle wash water treatment system. Vehicle wash does not mean engine, acid caustic metal brightener, or steam heated water washing. It does not include cleaning the interior of bulk carriers. It does not include tanker trucks, garbage

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trucks, logging trucks, livestock trucks, construction equipment, trains, boats and ships that are more than 8.6 feet beam and 25 feet in length, or aircraft. It does not include floor cleaning wash waters from vehicle maintenance areas.

9VAC25-194-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein in this chapter~~ and incorporated by reference, that regulation shall be as it exists and has been published ~~as a final regulation in the Federal Register prior to as of July 1, 2012, with the effective date as published in the Federal Register notice or October 16, 2012, whichever is later~~ 2016.

9VAC25-194-40. Effective date of the permit.

This general permit will become effective on October 16, ~~2012~~ 2017. This general permit will expire on October 15, ~~2017~~ 2022. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-194-50.

9VAC25-194-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge wastewater as described in 9VAC25-194-20 to surface waters of the Commonwealth of Virginia provided that ~~the owner submits and receives acceptance by the board of the registration statement of 9VAC25-194-60, submits the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-194-70, and provided that the board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.~~

1. The owner files a registration statement in accordance with 9VAC25-194-60, and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-194-70; and

4. The owner has not been notified by the board that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

~~2. Other board regulations prohibit such discharges~~ The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge ~~violates or~~ would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL; or

5. The discharge is to surface waters where there are central wastewater treatment facilities reasonably available, as determined by the board.

C. Mobile vehicle wash owners shall operate such that there is no discharge to surface waters and storm sewers unless they have coverage under this permit.

D. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the federal Clean Water Act, and the State Water Control Law, and applicable regulations under either with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the car wash facilities general permit issued in ~~2007~~ 2012, and that submits a complete registration statement on or before October 16, ~~2012~~ 2017, is authorized to continue to discharge under the terms of the ~~2007~~ 2012 general permit until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this permit ~~is denied~~.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2012 general permit ~~that has been continued~~;

b. Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by coverage under the 2012 continued general permit or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-194-60. Registration statement.

A. Deadlines for submitting registration statements. ~~The~~ Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration

statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for vehicle wash facilities and laundry facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for ~~commencing operation of the new~~ commencement of the discharge.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit ~~who that~~ is proposing to be covered by this general permit shall submit a complete registration statement at least ~~210~~ 240 days prior to the expiration date of the individual VPDES permit.

~~b. Any owner that was authorized to discharge under the general VPDES permit for coin operated laundries (9VAC25-810) that became effective on February 9, 2011, and who intends to continue coverage under this general permit, shall submit a complete registration statement to the board prior to September 16, 2012.~~

~~e. b.~~ Any owner that was authorized to discharge under the general VPDES permit for ~~car wash~~ vehicle wash facilities (9VAC25-194) that became effective on October 16, ~~2007~~ 2012, and ~~who that~~ intends to continue coverage under this general permit, shall submit a complete registration statement to the board prior to September ~~16, 2012~~ 15, 2017.

~~d. c.~~ Any owner of a vehicle wash facility covered under this permit ~~who that~~ had a monthly average flow rate of less than 5,000 gallons per day, and the flow rate increases above a monthly average flow rate of 5,000 gallons per day, shall submit an amended registration statement within 30 days of the increased flow.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted, after October 15, 2017, but authorization to discharge will not be retroactive. Owners described in ~~subdivisions~~ subdivision A 2 b and e of this section that submit late registration statements after September 15, 2017, are authorized to discharge under the provisions of 9VAC25-194-50 E if a complete registration statement is submitted ~~on or~~ before October 16, ~~2012~~ 2017.

C. The required registration statement shall contain the following information:

1. Facility name and mailing address, owner name and mailing address, telephone number, and email address (if available);
2. Facility street address (if different from mailing address);
3. Facility operator (local contact) name, address, telephone number, and email address (if available) if different than owner;

4. Does the facility discharge to surface waters? If "yes," name of receiving stream; if "no," describe the discharge;

5. Does the facility discharge to a Municipal Separate Storm Sewer System (MS4)? If "yes," the facility owner must notify the owner of the municipal separate storm sewer system of the existence of the discharge ~~within 30 days of coverage under the general permit and provide the following information~~ at the time of registration and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

6. Does the facility have a current VPDES Permit? If "yes," provide permit number;

7. Does your locality require connection to central wastewater treatment facilities?

8. Are central wastewater treatment facilities available to serve the site? If "yes," the option of discharging to the central wastewater facility must be evaluated and the result of that evaluation reported here;

9. A USGS 7.5 minute topographic map or equivalent computer generated map showing the facility discharge location(s) and receiving stream;

10. Provide a brief description of the type of washing activity. Include (as applicable) the type of vehicles washed, number of vehicle washing bays, and the number of laundry machines;

11. Highest average monthly flow rate for each washing activity or combined washing activity, reported as gallons per day;

12. Facility line (water balance) drawing;

13. Description of wastewater treatment;

14. Information on use of chemicals at the facility. Include detergents, soaps, waxes, and other chemicals;

15. Will detergent used for washing vehicles contain more than 0.5% phosphorus by weight? and

16. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

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The registration statement shall be signed in accordance with 9VAC25-31-110 of the VPDES Permit Regulation.

9VAC25-194-70. General permit.

Any owner whose registration statement is accepted by the board ~~will receive the following permit and~~ shall comply with the requirements ~~therein of the general permit~~ and be subject to all requirements of ~~9VAC25-31-170 of the VPDES Permit Regulation.~~

General Permit No.: VAG75

Effective Date: October 16, ~~2012~~ 2017

Expiration Date: October 15, ~~2017~~ 2022

GENERAL PERMIT FOR VEHICLE WASH FACILITIES AND LAUNDRY FACILITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from vehicle wash facilities that discharge a monthly average flow rate less than or equal to 5,000 gallons per day from ~~outfall(s)~~ outfalls:

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency ⁽³⁾	Sample Type
Flow (GPD)	NA	NL	1/Year	Estimate
pH (S.U.)	6.0 ⁽¹⁾	9.0 ⁽¹⁾	1/Year	Grab
TSS (mg/l)	NA	60 ⁽²⁾	1/Year	5G/8HC
Oil and Grease (mg/l)	NA	15	1/Year	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

5G/8HC - Eight Hour Composite—Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

⁽¹⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

⁽²⁾Limit given is expressed in two significant figures.

⁽³⁾Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January of each year. The first DMR is due January 10, 2014.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from vehicle wash facilities that discharge a monthly average flow rate greater than 5,000 gallons per day from ~~outfall(s)~~ outfalls:

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency ⁽³⁾	Sample Type
Flow (GPD)	NA	NL	1/6 Months	Estimate

pH (S.U.)	6.0 ⁽¹⁾	9.0 ⁽¹⁾	1/6 Months	Grab
TSS (mg/l)	NA	60 ⁽²⁾	1/6 Months	5G/8HC
Oil and Grease (mg/l)	NA	15	1/6 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

5G/8HC - Eight Hour Composite - Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

⁽¹⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

⁽²⁾Limit given is expressed in two significant figures.

⁽³⁾Samples shall be collected by December 31 and June 30 of each year and reported on the facility's Discharge Monitoring Report (DMR). DMRs shall be submitted by January 10 and July 10 of each year.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from a laundry facility from ~~outfall(s)~~ outfalls:

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency ⁽³⁾	Sample Type
Flow (GPD)	NA	NL	1/Quarter	Estimate
pH (S.U.)	6.0 ⁽¹⁾	9.0 ⁽¹⁾	1/Quarter	Grab
TSS (mg/l)	NA	60 ⁽²⁾	1/Quarter	Grab
BOD ₅ (mg/l)	NA	60 ^{(1), (2)}	1/Quarter	Grab
Dissolved Oxygen (mg/l)	6.0 ⁽¹⁾	NA	1/Quarter	Grab
Temperature °C	NA	32 ^{(1), (4)}	1/6 Months	Immersion Stabilization
Total Residual Chlorine (mg/l)	NA	.011 ⁽¹⁾	1/Quarter	Grab
E. Coli ⁽⁵⁾	NA	235 CFU/100 ml	1/6 Months	Grab
Enterococci ⁽⁶⁾	NA	104 CFU/100 ml	1/6 Months	Grab
Fecal Coliform ⁽⁷⁾	NA	200 CFU/100 ml	1/6 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

CFU – Colony ~~Forming Units~~ forming units

⁽¹⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, BOD₅, DO, TRC and temperature in waters receiving the discharge, those standards shall be, as appropriate, the maximum and minimum effluent limitations.

⁽²⁾Limit given is expressed in two significant figures.

⁽³⁾Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January. Reports of once per six months shall be submitted no later than the 10th day of January and the 10th day of July for samples collected by December 31 and June 30 of each year.

⁽⁴⁾The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. For estuarine

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waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

⁽⁵⁾Applies only when the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

⁽⁶⁾Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations).

⁽⁷⁾Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters).

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from a combined vehicle wash and laundry facility from ~~outfall(s)~~ outfalls:

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency ⁽³⁾	Sample Type
Flow (GPD)	NA	NL	1/Quarter	Estimate
pH (S.U.)	6.0 ⁽¹⁾	9.0 ⁽¹⁾	1/Quarter	Grab
TSS (mg/l)	NA	60 ⁽²⁾	1/Quarter	5G/8HC
BOD ₅ (mg/l)	NA	60 ^{(1), (2)}	1/Quarter	Grab
Oil & Grease	NA	15	1/6 Months	Grab
Dissolved Oxygen (mg/l)	6.0 ⁽¹⁾	NA	1/Quarter	Grab
Temperature °C	NA	32 ^{(1), (4)}	1/6 Months	Immersion Stabilization
Total Residual Chlorine (mg/l)	NA	.011 ⁽¹⁾	1/Quarter	Grab
E. Coli ⁽⁵⁾	NA	235 CFU/100 ml	1/6 Months	Grab
Enterococci ⁽⁶⁾	NA	104 CFU/100 ml	1/6 Months	Grab
Fecal Coliform ⁽⁷⁾	NA	200 CFU/100 ml	1/6 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

CFU – Colony ~~Forming Unit~~ forming units

⁽¹⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, BOD₅, DO, TRC and temperature in waters receiving the discharge, those standards shall be, as appropriate, the maximum and minimum effluent limitations.

⁽²⁾Limit given is expressed in two significant figures.

⁽³⁾Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January. Reports of once per six months shall be submitted no later than the 10th day of January and the 10th day of July for samples collected by December 31 and June 30 of each year.

⁽⁴⁾The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For

natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

⁽⁵⁾Applies only when the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

⁽⁶⁾Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations).

⁽⁷⁾Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters).

B. Special conditions.

1. The permittee of a vehicle wash facility shall perform ~~inspections~~ visual examinations of the effluent including sheens, floating solids, or visible foam and maintenance of the wastewater treatment facilities at least once per week and document ~~activities on this visual examination in~~ the operational log. This operational log shall include the examination date and time, examination personnel, and the visual quality of the discharge and shall be made available for review by the department personnel upon request.

2. The effluent shall be free of sheens. There shall be no discharge of floating solids or visible foam in other than trace amounts.

3. No sewage shall be discharged from a point source to surface waters from this facility except under the provisions of another VPDES permit specifically issued for that purpose.

4. There shall be no chemicals added to the water or waste which may be discharged other than those listed on the owner's accepted registration statement, unless prior approval of the ~~chemical(s)~~ chemical is granted by the board.

5. Wastewater should be reused or recycled whenever feasible.

6. The permittee of a vehicle wash facility shall comply with the following solids management plan:

a. All settling basins shall be cleaned frequently in order to achieve effective treatment.

b. All solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids.

7. Washing of vehicles or containers bearing residue of animal manure or toxic chemicals (fertilizers, organic chemicals, etc.) ~~into the wastewater treatment system~~ is prohibited. If the facility is a self-service operation, the permittee shall post this prohibition on a sign prominently located and of sufficient size to be easily read by all patrons.

8. If the facility has a vehicle wash discharge with a monthly average flow rate of less than 5,000 gallons per day, and the flow rate increases above a monthly average flow rate of 5,000 gallons per day, an amended registration statement shall be filed within 30 days of the increased flow.

9. ~~Any A~~ permittee submitting a registration statement in accordance with Part II M and discharging into a municipal separate storm sewer shall notify the owner of the municipal separate storm sewer system of the existence of the discharge ~~within 30 days of coverage under the general permit and provide~~ at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number.

10. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

11. The permittee shall notify the department as soon as ~~they know~~ the permittee knows or ~~have~~ has reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter of the toxic pollutant;

(2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter of the toxic pollutant;

(2) One milligram per liter for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

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(4) The level established by the board.

12. Operation and maintenance manual requirement. The permittee shall develop and maintain an accurate operations and maintenance (O&M) manual for the vehicle wash wastewater treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by the department personnel upon request. The O&M manual shall include, but not necessarily be limited to, the following items, as appropriate:

- a. Techniques to be employed in the collection, preservation, and analysis of effluent samples;
- b. Discussion of best management practices, ~~if applicable~~;
- c. Treatment system operation, routine preventive maintenance of units within the treatment system, critical spare parts inventory, and recordkeeping;
- d. A sludge/solids ~~disposal~~ management plan as required by Part I B 6; and
- e. Procedures for performing the visual examination and maintenance required by Part I B 1 including example log sheets; and
- ~~e. Date(s)~~ f. Date when the O&M manual was updated or reviewed and any changes that were made.

13. Compliance ~~Reporting~~ reporting under Part I A 1- 4.

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
BOD ₅	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l
Chlorine	0.10 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Reporting. Any single datum required shall be reported as "<QL" if it is less than the QL in subdivision 13 a of this ~~subdivision~~ subsection. Otherwise, the numerical value shall be reported. The QL must be less than or equal to the QL in subdivision 13 a of this subsection.

c. Monitoring results shall be reported using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention

consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

~~14. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.~~

~~15. 14.~~ The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards in 9VAC25-260.

~~16. 15.~~ Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

~~17. 16.~~ Notice of ~~Termination~~ termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer wastewater discharges from vehicle wash or laundry activities from the facility;

(2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted);

(3) All discharges associated with this facility have been covered by an individual or an alternative VPDES permit; or

(4) ~~Notice of termination~~ Termination of coverage is requested for another reason provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES vehicle wash facilities and laundry facilities general permit number; and

(4) The basis for submitting the notice of termination, including:

i. (a) A statement indicating that a new owner has assumed responsibility for the facility;

ii. (b) A statement indicating that operations have ceased at the facility and there are no longer wastewater discharges from vehicle wash or laundry activities from the facility;

~~iii.~~ (c) A statement indicating that all wastewater discharges from vehicle wash facilities and laundry facilities have been covered by an individual VPDES permit; or

~~iv.~~ (d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification:

"I certify under penalty of law that all wastewater discharges from vehicle wash or laundry facilities from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge wastewater from vehicle wash facilities or laundry facilities in accordance with the general permit, and that discharging pollutants in wastewater from vehicle wash facilities or laundry facilities to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be signed in accordance with Part II K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the vehicle wash or laundry facility is located.

Part II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may

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be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F₂, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee

shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall submit the report to the department in writing within five days of discovery of the discharge in accordance with Part II I 2.

Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/prep/h2rpt.html> <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency

Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to

assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reporting requirements. All reports required by permits and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

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my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U) and "upset" (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper

operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

- b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the causes of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required in Part II I; and
 - d. The permittee complied with any remedial measures required under Part II S.
3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and

reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:
 - a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;
 - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and, if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R16-4617; Filed December 19, 2016, 10:44 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Regulations

Title of Regulation: 9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-10 through 9VAC25-820-80; adding 9VAC25-820-15).

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

Effective Date: February 8, 2017.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4147, FAX (804) 698-4032, or email allan.brockenbrough@deq.virginia.gov.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

This action amends and reissues the general permit for total nitrogen (TN) and total phosphorus (TP) discharges and nutrient trading in the Chesapeake Bay watershed in Virginia. The regulation provides for the permitting of TN and TP discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth. The amendments to the existing regulation update and clarify definitions, effective dates, monitoring frequencies and sample types, quantification level requirements, trading ratio provisions, and new wasteload allocations for some facilities as required by the December 29, 2010, Chesapeake Bay total maximum daily load with associated compliance schedule requirements and conditions applicable to all Virginia Pollutant Discharge Elimination System permits.

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-44.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

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

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a ~~permitted~~ facility, as determined by the specific geographic location of the ~~permitted~~ facility, to account for attenuation that occurs during riverine transport between the ~~permitted~~ facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

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

"Director" means the director of the Department of Environmental Quality.

"Eastern Shore trading ratio" means the ~~number~~ ratio of pounds of point source credits from another tributary that can be acquired and applied by the owner of a facility in the Eastern ~~Coastal~~ Shore Basin for every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.5 million gallons per day.

"Existing facility" means a facility holding (i) subject to a current individual VPDES permit that from which a discharge has either commenced discharge from, or for which its owner has received a Certificate to Construct (for sewage treatment

works, or equivalent DEQ approval for discharges from industrial facilities) ~~for the treatment works used to derive its waste load wasteload~~ allocation on or before July 1, 2005, or (ii) ~~for which the owner~~ has a ~~waste load wasteload~~ allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, ~~without not subject to~~ an individual VPDES permit, ~~for~~ which its owner holds a separate ~~waste load wasteload~~ allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus above the ~~waste load wasteload~~ allocation.

"Facility" means a point source ~~discharging from which a discharge or proposing to proposed discharge of~~ total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries ~~exists~~. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.

"New discharge" means any discharge from a facility that did not commence ~~the discharge of pollutants~~ prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of

less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual ~~waste load wasteload~~ allocation of total nitrogen or total phosphorus ~~by for~~ a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger, ~~and~~ that does not have a ~~waste load wasteload~~ allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or ~~for which an owner~~ has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the ~~owner of the~~ expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the ~~owner of the~~ facility must acquire credits at the end of a calendar year. For the purpose of this ~~regulation chapter~~, ~~owners of~~ facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility ~~whose owner is~~ authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the ~~waste load wasteload~~ allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged ~~by~~ ~~from~~ that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the ~~waste load wasteload~~ allocation for a permitted facility specified as an annual mass load of total

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phosphorus and (ii) the monitored annual mass load of total phosphorus discharged ~~by~~ from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level ~~(QL)~~" or "QL" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that ~~have~~ are registered for coverage under this general permit, by tributary, including their ~~waste load~~ wasteload allocations, permitted design capacities, and delivery factors as appropriate.

"Significant discharger" means the owner of (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that ~~is~~ was expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that ~~is~~ was expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins ~~for which separate tributary strategies were prepared pursuant to § 2.2-218 of the Code of Virginia~~ listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern ~~Coastal~~ Shore Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"VPDES" means Virginia Pollutant Discharge Elimination System.

~~"Waste load~~ "Wasteload allocation" means the most limiting of (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus ~~waste load~~ wasteload allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference that regulation shall be as it exists and has been published as of July 1, 2014.

9VAC25-820-20. Purpose, applicability, delegation of authority.

A. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake Bay watershed issued by the board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and § 62.1-44.19:14 of the Code of Virginia.

B. This general permit regulation governs owners of facilities holding individual VPDES permits or ~~that~~ otherwise ~~meet~~ meeting the definition of "existing facility" that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

C. The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-820-30. Relation to existing VPDES permits issued in accordance with 9VAC25-31.

A. This general permit shall control in lieu of conflicting or duplicative mass loading effluent limitations, monitoring or reporting requirements for total nitrogen and total phosphorus contained in individual VPDES permits for facilities covered by this general permit, where these requirements are based upon standards, criteria, ~~waste load~~ wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This general permit shall not control in lieu of more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where

those limitations are necessary to protect local water quality, or more stringent technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade.

C. The compliance schedule in this general permit shall control in lieu of conflicting or duplicative schedule requirements contained in individual VPDES permits for facilities covered by this general permit, where those requirements address mass loading of total nitrogen or total phosphorus and are based upon standards, criteria, ~~waste load~~ wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-40. Compliance plans.

A. By July 1, ~~2012~~ 2017, every owner ~~or operator~~ of a facility subject to ~~reduced individual total nitrogen or total phosphorus waste load allocations in the Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment dated December 29, 2010, (as identified in 9VAC25-820-80)~~ 9VAC25-820-80 and subject to a limit effective date after January 1, 2017, as defined in Part I C 1 of 9VAC25-820-70 shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.

1. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined ~~waste load~~ wasteload allocations of all the permittees in the tributary as soon as possible. Permittees submitting individual plans are not required to account for other facilities' activities.

2. As part of the compliance plan development, permittees shall either:

a. Demonstrate that the additional capital projects ~~is~~ anticipated by subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations ~~through~~ by the applicable deadline for the tributary to which the facility discharges (Part I C of the permit), or

b. Request that their individual ~~waste load~~ wasteload allocations become effective on January 1, ~~2012~~ 2017.

3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the ~~Water Quality Improvement Nutrient Offset Fund (§ 10.1-2128 et seq. 10.1-2128.2~~ Nutrient Offset Fund (§ 10.1-2128 et seq. 10.1-2128.2 of the Code of Virginia), to achieve compliance with the individual and combined ~~waste load~~ wasteload allocations in each tributary.

B. Every owner [~~or operator~~] of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association

submit annual compliance plan updates to the department for approval as required by Part I D of ~~this the~~ the general permit.

9VAC25-820-50. Transfer of permit coverage.

A. ~~This Coverage under the~~ Coverage under the general permit shall be transferred by the current permittee to a new owner [~~or operator~~] concurrently with the transfer of the individual ~~permit(s) permit or permits~~ permit or permits in accordance with 9VAC25-31-380. If the current permittee holds an aggregated [~~waste load~~ wasteload] allocation for multiple facilities in accordance with Part I B 2 of ~~this the~~ the general permit, the current permittee shall submit a revised registration statement for any facilities retained and the new owner shall submit a registration statement for the facilities transferred.

B. All conditions of ~~this the~~ the general permit, including, but not limited to, the submittal of a registration statement, annual nutrient allocation compliance and reporting requirements, shall apply to the new owner [~~or operator~~] immediately upon the transfer date.

9VAC25-820-60. Termination of permit coverage.

The owner [~~or operator~~] shall terminate coverage under this general permit concurrently with any request for termination of the individual ~~permit(s) permit or permits~~ permit or permits in accordance with 9VAC25-31-370.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements ~~therein of the general permit~~.

General Permit No.: VAN000000
 Effective Date: January 1, ~~2012~~ 2017
~~Amended Effective Date: November 21, 2012~~
 Expiration Date: December 31, ~~2016~~ 2021

GENERAL PERMIT FOR TOTAL NITROGEN AND
 TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT
 TRADING IN THE CHESAPEAKE WATERSHED IN
 VIRGINIA
 AUTHORIZATION TO DISCHARGE UNDER THE
 VIRGINIA POLLUTANT DISCHARGE ELIMINATION
 SYSTEM AND THE VIRGINIA STATE WATER
 CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant ~~hereto to it~~, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen ~~and/or~~ and/or total phosphorus discharges, ~~or both~~ to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen ~~and/or~~ and/or total phosphorus, ~~or both~~.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded

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Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I

SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner [~~or operator~~] of a facility required to submit a registration statement to the department by November 1, ~~2014~~ 2016, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner [~~or operator~~] of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners [~~or operators~~] of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, ~~2016~~ 2021, in accordance with Part III A M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that the discharge is not eligible for coverage under the reissued this general permit is denied.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

(1) Initiate enforcement action based upon the 2012 general permit ~~that has been continued~~,

(2) Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit ~~if~~ if the general permit coverage is denied, the owner would then be required to cease the ~~activities~~ discharges authorized by the administratively continued coverage under the terms of the 2012 general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. ~~Waste load~~ Wasteload allocations.

1. ~~Waste load~~ Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable ~~total maximum daily loads~~ TMDLs, or ~~waste load~~ wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The ~~waste load~~ wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner [~~or operator~~] of two or more facilities covered by this general permit and ~~located in~~ discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus ~~waste load~~ wasteload allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the ~~waste load~~ wasteload allocations assigned to any of the affected facilities.

c. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner ~~who that~~ consolidates two or more facilities ~~located in~~ discharging to the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus, subject to the following conditions:

a. If all of the affected facilities have ~~waste-load~~ wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the ~~waste-load~~ wasteload allocations of the affected facilities. The regional facility shall be eligible to generate credits.

b. If any, but not all, of the affected facilities has a ~~waste-load~~ wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) ~~Waste-load~~ Wasteload allocations of those facilities that have ~~waste-load~~ wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a ~~waste-load~~ wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following formulae:

$$\text{Nitrogen Load (lbs/day)} = \text{flow} \times 8.0 \text{ mg/l} \times 8.345 \times 365 \text{ days/year}$$

$$\text{Phosphorus Load (lbs/day)} = \text{flow} \times 1.0 \text{ mg/l} \times 8.345 \times 365 \text{ days/year}$$

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

c. If none of the affected facilities have a ~~waste-load~~ wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities. ~~The regional facility shall not be eligible to generate credits.~~

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

e. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus ~~waste-load~~ wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned ~~waste-load~~ wasteload allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus ~~waste-load~~ wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the [~~bay~~ Chesapeake Bay] watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned ~~waste-load~~ wasteload allocation.

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C. Schedule of compliance.

1. The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the facilities listed in 9VAC25-820-80.

a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan-based adjustment by the board pursuant to subdivision 1 b of this subsection, for each ~~parameter~~ upgrade phase:

Tributary	Parameter	Final Effluent Limits Effective Date
James River	Nitrogen	January 1, 2017
York River	Phosphorus	January 1, 2016

Upgrade Phase	Limit Effective Date
Phase 1 Total Nitrogen	January 1, 2017
Phase 2 Total Nitrogen	January 1, 2022
Phase 2 Total Phosphorus	January 1, 2017

b. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

2. The registration list shall contain individual dates for compliance ~~(as defined in Part I J 1 a b of this general permit)~~ with wasteload allocations for dischargers, as follows:

a. ~~Facilities~~ Owners of facilities listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans; that may be earlier than the ~~basin~~ upgrade phase schedule listed in subdivision 1 of this subsection.

b. ~~Facilities~~ Owners of facilities listed in ~~9VAC25-820-70~~ 9VAC25-820-80 that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, ~~2012~~ 2017.

c. Upon completion of the projects contained in their compliance plans, owners of facilities listed in 9VAC25-820-80 may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than the ~~basin~~ upgrade phase schedule listed in subdivision 1 of this subsection.

d. New Owners of new and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to discharges from the facility.

3. The ~~39~~ significant dischargers in the James River Basin shall meet aggregate discharged ~~waste load~~ wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.

D. Annual update of compliance plan. Every owner [~~or operator~~] of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan ~~for the facility~~ to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual ~~waste load~~ wasteload allocations on the registration list and aggregate ~~waste load~~ wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the ~~Water Quality Improvement Nutrient Offset~~ Fund, to achieve compliance with the individual and combined ~~waste load~~ wasteload allocations in each tributary. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined ~~waste load~~ wasteload allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified [in the table] below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring ~~and/or~~ or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency					
STP design flow	≥20.0 MGD	[5.0-19.999 MGD]	[1.0 - 19.999 1.0-4.999]-MGD	<u>0.5 - 0.999</u> MGD	0.040-0.999 <u>0.040 - 0.499</u> MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		[≥350,000 lb/yr]	>100,000 <u>100,000 - 349,999</u>] lb/yr ≥ 350,000] lb/yr	<u>50,000 - 99,999</u> lb/yr	487-99,999 <u>487 - 49,999</u> lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities		[≥35,000 lb/yr]	>10,000 <u>10,000 - 34,999</u>] lb/yr ≥ 35,000] lb/yr	<u>5,000 - 9,999</u> lb/yr	37-9,999 <u>37 - 4,999</u> lb/yr	< 37 lb/yr
Flow	Totalizing, Indicating, and Recording					1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO ₂ - (as N) + NO ₃ - (as N))	24 HC 3 Days/Week	[24 HC <u>2/Week*</u>]	24 HC [1/Week <u>2 Days/Week*</u>]	<u>8 HC</u> [4/Month** <u>2 Days/Week*</u>]	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	[24 HC <u>2/Week*</u>]	24 HC [1/Week <u>2 Days/Week*</u>]	<u>8 HC</u> [4/Month** <u>2 Days/Week*</u>]	8 HC 2/Month, > 7 days apart	1/Month Grab
<p>*Two [24 hour] flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</p> <p>[**Two sets of two 8 hour flow composited samples taken at least one day apart but in the same calendar week that are then composited by flow into two weekly composite samples per month for analysis shall be considered to be in compliance with this requirement.]</p>						

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed ~~above~~ in subdivision 1 of Part I E; however, the permittee shall report all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the ~~facility's~~ owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

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ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant [~~figures~~ figures].

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used ~~should~~ shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is ~~those~~ that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.

F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

1. The following owners [~~or operators~~] are required to register for coverage under this general permit:

a. Every owner [~~or operator~~] of an existing facility authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment ~~work works~~, or an equivalent load from an industrial facility, directly into nontidal waters [;] shall submit a registration statement to the department by November 1, ~~2014~~ 2016, and thereafter upon the reissuance of this general permit in accordance with Part III ~~B M~~. The conditions of this general permit will apply to such owner [~~and operator~~] upon approval of a registration statement.

b. Any owner [~~or operator~~] of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment ~~work works~~, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70, and thereafter upon the reissuance of this general permit in accordance with Part III ~~B M~~. The conditions of this general permit will apply to such

owner [~~or operator~~] beginning ~~on the start~~ January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner [~~or operator~~] of a facility treating domestic sewage authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that ~~has~~ did not ~~commenced~~ commence the discharge of pollutants prior to January 1, 2011, shall submit a registration statement with the department at the time he makes application for an individual permit with the department or prior to commencing a discharge, ~~which ever~~ whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III ~~B M~~.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, ~~e-mail~~ email address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, ~~e-mail~~ email address and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated ~~waste-load~~ wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of ~~waste-load~~ wasteload allocation acquired. ~~Waste-load~~ Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's ~~waste-load~~ wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of ~~Water~~ VPDES Permits ~~and Compliance Assistance~~.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a

facility's ~~waste-load~~ wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new [~~waste-load~~ wasteload] allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new ~~waste-load~~ wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion; or (ii) delivery factor; shall be published once a week for two consecutive weeks in a ~~major~~ local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the ~~owner~~ owner's [~~or operator's~~] intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of ~~waste-load~~ wasteload allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1).

~~e.~~ f. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner [~~or operator~~] and persons who may be affected by the discharge from the facility;

~~f.~~ g. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's [~~or operator's~~] representative who can be contacted by the interested persons to answer questions;

~~g.~~ h. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

~~h.~~ i. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner [~~or operator~~] shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The

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comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with ~~waste-load~~ wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its ~~waste-load~~ wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its ~~waste-load~~ wasteload allocation if:

a. The annual mass load is less than or equal to the applicable ~~waste-load~~ wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual ~~waste-load~~ wasteload allocations for each permitted facility; or

c. In the event ~~if~~ he is unable to meet the individual ~~waste-load~~ wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the ~~Water Quality Improvement~~ Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual ~~waste-load~~ wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern ~~Coastal Shore~~ Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Coastal Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern ~~Coastal Shore~~ Basin facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's ~~waste-load~~ wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the ~~Water Quality Improvement~~ Nutrient Offset Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the ~~Water Quality Improvement~~ Nutrient Offset Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the ~~Virginia Water Quality Improvement~~ Nutrient Offset Fund established in § ~~40.1-2128~~ 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the ~~permittee~~ permittee's facility is located. Payments to the ~~Water Quality Improvement~~ Nutrient Offset Fund shall be in the amount of ~~\$6.04~~ \$4.60 for each pound of nitrogen and ~~\$15.08~~ \$10.10 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year.

b. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern ~~Coastal Shore~~ Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Coastal Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from ~~the~~ owners of

facilities that discharge to a Rappahannock tributary by the owners of an Eastern Coastal Shore Basin facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires [τ] nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II

SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner [~~or operator~~] of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner [~~or operator~~] of a facility authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit first issued before July 1, 2005, that expands ~~his~~ the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired ~~waste-load~~ wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner [~~or operator~~] of a facility authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired ~~waste-load~~ wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner [~~or operator~~] of a facility treating domestic sewage authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that ~~has~~ did not ~~commence~~ commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired ~~waste-load~~ wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable ~~waste-load~~ wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a ~~waste-load~~ wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner [~~or operator~~] of multiple facilities ~~located in that discharge into~~ the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities [τ] shall be required to acquire ~~waste-load~~ wasteload allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of ~~waste-load~~ wasteload allocations. ~~Waste-load~~ wasteload allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the ~~waste-load~~ wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia ~~or certified by the Soil and Water Conservation Board pursuant to § 40.1-603.15:2 of the Code of Virginia~~. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the ~~Soil and Water Conservation Board~~ board pursuant to § ~~40.1-603.15:2~~ 62.1-44.19:20 of the Code of Virginia; On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the

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effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined [~~;~~]

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

~~(5) Included as~~ Generated in accordance with conditions of the facility's individual ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit; and

(6) In the case of ~~allocations~~ credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the ~~Virginia Water Quality Improvement~~ Nutrient Offset Fund established in § ~~40.1-2128~~ 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner [~~or operator~~] of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner [~~or operator~~] installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

b. The allocations or credits shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual ~~Virginia Pollutant Discharge Elimination~~ VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's ~~waste load~~ wasteload allocations.

f. Such allocations or credits shall be ~~provided~~ secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner [~~or operator~~] has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the ~~permittee~~ permittee's facility discharge is located.

4. Annual allocation acquisitions from the ~~Water Quality Improvement~~ Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the ~~WQIF~~ Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the ~~Department of Conservation and Recreation~~ department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

~~A. Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance~~

constitutes a violation of the law and the Clean Water Act, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

B. ~~Duty to register for reissued general permit.~~ If the permittee wishes to continue an activity regulated by the general permit after its expiration date, the permittee must register for coverage under the new general permit, when it is reissued by the department.

C. ~~Need to halt or reduce activity not a defense.~~ It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. ~~Duty to mitigate.~~ The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. ~~Proper operation and maintenance.~~ The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. ~~Permit actions.~~ Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. ~~Property rights.~~ Permits do not convey any property rights of any sort, or any exclusive privilege.

H. ~~Duty to provide information.~~ The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit, pertaining to activities related to the permitted facility.

~~I. Inspection and entry.~~ The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

- ~~1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;~~
- ~~2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;~~
- ~~3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and~~
- ~~4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the law, any substances or parameters at any location.~~

~~J. Monitoring and records.~~

- ~~1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.~~
- ~~2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.~~
- ~~3. Records of monitoring information shall include:~~
 - ~~a. The date, exact place, and time of sampling or measurements;~~
 - ~~b. The individual(s) who performed the sampling or measurements;~~
 - ~~c. The date(s) analyses were performed;~~
 - ~~d. The individual(s) who performed the analyses;~~
 - ~~e. The analytical techniques or methods used; and~~
 - ~~f. The results of such analyses.~~
- ~~4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods, unless other test procedures have been specified in the permit.~~

~~K. Signatory requirements.~~ All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

~~L. Reporting requirements.~~

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~~1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:~~

~~a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A; or~~

~~b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1.~~

~~2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.~~

~~3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the Clean Water Act.~~

~~4. Monitoring results shall be reported at the intervals specified in the permit.~~

~~a. Monitoring results must be reported on a Discharge Monitoring Report (DMR).~~

~~b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR specified by the department.~~

~~c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.~~

~~5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.~~

~~6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this~~

~~subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:~~

~~a. Unusual spillage of materials resulting directly or indirectly from processing operations;~~

~~b. Breakdown of processing or accessory equipment;~~

~~c. Failure or taking out of service of the treatment work or auxiliary facilities (such as sewer lines or wastewater pump stations); and~~

~~d. Flooding or other acts of nature.~~

~~7. Twenty four hour reporting.~~

~~a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.~~

~~b. The following shall be included as information that must be reported within 24 hours under this subdivision.~~

~~(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.~~

~~(2) Any upset that exceeds any effluent limitation in the permit.~~

~~(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.~~

~~c. The board may waive the written report on a case by case basis for reports under this subdivision if the oral report has been received within 24 hours.~~

~~8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.~~

~~9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.~~

~~M. Bypass.~~

~~1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.~~

2. Notice.

- a. ~~Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.~~
- b. ~~Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24 hour notice).~~

3. Prohibition of bypass.

- a. ~~Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:~~
 - (1) ~~Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;~~
 - (2) ~~There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and~~
 - (3) ~~The permittee submitted notices as required under subdivision 2 of this subsection.~~
- b. ~~The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.~~

N. Upset.

- 1. ~~An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.~~
- 2. ~~A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:~~
 - a. ~~An upset occurred and that the permittee can identify the cause(s) of the upset;~~
 - b. ~~The permitted facility was at the time being properly operated;~~
 - c. ~~The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24 hour notice); and~~
 - d. ~~The permittee complied with any remedial measures required under subsection D of this section.~~

3. ~~In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.~~

A. Monitoring.

- 1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
- 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
- 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

- 1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;
 - d. The individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results. [Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subdivisions apply:]

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another

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reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge

immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may

justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure [~~long term~~ long-term] environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field,

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superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation.

These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits. Permits are not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid,

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the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9VAC25-820-80. Facilities subject to reduced individual total nitrogen and total phosphorus waste load wasteload allocations.

The [James River] facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus waste load wasteload allocations as indicated.

Facility	Registration No.	Basin	Reduced Waste Load Allocation
Caroline Co. Regional STP	VAN030045	York	609 lbs/yr TP
Gordonsville STP	VAN030046	York	1,145 lbs/yr TP
Hanover County Aggregate ¹	VAN030051	York	11,390 lbs/yr TP (delivered)
White Birch Paper – Bear Island LLC Division	VAN030133	York	10,233 lbs/yr TP
Western Refinery – Yorktown	VAN030047	York	17,689 lbs/yr TP
HRSD York River Aggregate ²	VAN030052	York	19,315 lbs/yr TP (delivered)
Parham Landing WWTP	VAN030048	York	2,436 lbs/yr TP
RockTenn CP LLC – West Point	VAN030049	York	56,038 lbs/yr TP
HRSD James River Aggregate ³	VAN040090	James	4,400,000 lbs/yr TN (delivered)

¹Hanover County Aggregate includes Ashland STP (VA0024899), Doswell WWTP (VA0029521), and Totopotomoy WWTP (VA0089915)

²HRSD York River Aggregate includes York River STP (VA0081311), West Point STP (VA0075434), and King William STP (VA0028819).

Facility	VPDES No.	Phase 1 Total Nitrogen (lbs/yr)	Phase 2 Total Nitrogen (lbs/yr)	Phase 2 Total Phosphorus (lbs/yr)
<u>Buena Vista STP</u>	<u>VA0020991</u>	<u>N/A</u>	<u>N/A</u>	<u>2,778</u>
<u>Covington STP</u>	<u>VA0025542</u>	<u>N/A</u>	<u>N/A</u>	<u>3,705</u>
<u>GP Big Island LLC</u>	<u>VA0003026</u>	<u>N/A</u>	<u>N/A</u>	<u>40,273</u>
<u>Mohawk Industries, Inc.</u>	<u>VA0004677</u>	<u>N/A</u>	<u>N/A</u>	<u>9,880</u>
<u>Lexington - Rockbridge Regional WQCF</u>	<u>VA0088161</u>	<u>N/A</u>	<u>N/A</u>	<u>3,705</u>
<u>Alleghany County - Low Moor STP</u>	<u>VA0027979</u>	<u>N/A</u>	<u>N/A</u>	<u>617</u>
<u>Lower Jackson River STP</u>	<u>VA0090671</u>	<u>N/A</u>	<u>N/A</u>	<u>1,852</u>
<u>Clifton Forge STP</u>	<u>VA0022772</u>	<u>N/A</u>	<u>N/A</u>	<u>2,470</u>
<u>MeadWestvaco</u>	<u>VA0003646</u>	<u>N/A</u>	<u>N/A</u>	<u>96,771</u>
<u>Amherst - Rutledge Creek WWTP</u>	<u>VA0031321</u>	<u>N/A</u>	<u>N/A</u>	<u>741</u>
<u>BWX Technologies Inc.</u>	<u>VA0003697</u>	<u>N/A</u>	<u>N/A</u>	<u>1,235</u>
<u>Greif Inc.</u>	<u>VA0006408</u>	<u>N/A</u>	<u>N/A</u>	<u>24,082</u>
<u>Lake Monticello STP</u>	<u>VA0024945</u>	<u>N/A</u>	<u>N/A</u>	<u>1,229</u>

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<u>Lynchburg STP (DWF only)</u>	<u>VA0024970</u>	<u>N/A</u>	<u>N/A</u>	<u>27,169</u>
<u>RWSA - Moores Creek Regional STP</u>	<u>VA0025518</u>	<u>N/A</u>	<u>N/A</u>	<u>18,525</u>
<u>Powhatan CC STP</u>	<u>VA0020699</u>	<u>N/A</u>	<u>N/A</u>	<u>581</u>
<u>Crewe WWTP</u>	<u>VA0020303</u>	<u>N/A</u>	<u>N/A</u>	<u>617</u>
<u>Farmville WWTP</u>	<u>VA0083135</u>	<u>N/A</u>	<u>N/A</u>	<u>2,964</u>
<u>Richmond WWTP (DWF only)</u>	<u>VA0063177</u>	<u>N/A</u>	<u>N/A</u>	<u>55,574</u>
<u>E. I. DuPont - Spruance</u>	<u>VA0004669</u>	<u>N/A</u>	<u>N/A</u>	<u>6,339</u>
<u>Chesterfield County - Falling Creek WWTP</u>	<u>VA0024996</u>	<u>N/A</u>	<u>N/A</u>	<u>12,473</u>
<u>Chesterfield County - Proctors Creek WWTP</u>	<u>VA0060194</u>	<u>N/A</u>	<u>N/A</u>	<u>33,344</u>
<u>Dominion - Chesterfield (Net)</u>	<u>VA0004146</u>	<u>N/A</u>	<u>N/A</u>	<u>170</u>
<u>Henrico County WWTP</u>	<u>VA0063690</u>	<u>N/A</u>	<u>N/A</u>	<u>92,623</u>
<u>The Sustainability Park LLC</u>	<u>VA0002780</u>	<u>N/A</u>	<u>N/A</u>	<u>1,556</u>
<u>Philip Morris USA - Park 500</u>	<u>VA0026557</u>	<u>N/A</u>	<u>N/A</u>	<u>2,149</u>
<u>Honeywell - Hopewell</u>	<u>VA0005291</u>	<u>N/A</u>	<u>N/A</u>	<u>41,841</u>
<u>Hopewell Regional WTF</u>	<u>VA0066630</u>	<u>N/A</u>	<u>N/A</u>	<u>61,749</u>
<u>South Central WW Authority WWTF</u>	<u>VA0025437</u>	<u>N/A</u>	<u>N/A</u>	<u>28,404</u>
<u>Tyson Foods - Glen Allen</u>	<u>VA0004031</u>	<u>N/A</u>	<u>N/A</u>	<u>409</u>
<u>Chickahominy WWTP</u>	<u>VA0088480</u>	<u>N/A</u>	<u>N/A</u>	<u>123</u>
<u>HRSD - Boat Harbor STP</u>	<u>VA0081256</u>	<u>N/A</u>	<u>N/A</u>	<u>43,177</u>
<u>HRSD - James River STP</u>	<u>VA0081272</u>	<u>N/A</u>	<u>N/A</u>	<u>34,541</u>
<u>HRSD - Williamsburg STP</u>	<u>VA0081302</u>	<u>N/A</u>	<u>N/A</u>	<u>38,859</u>
<u>HRSD - Nansemond STP</u>	<u>VA0081299</u>	<u>N/A</u>	<u>N/A</u>	<u>51,812</u>
<u>HRSD - Army Base STP</u>	<u>VA0081230</u>	<u>N/A</u>	<u>N/A</u>	<u>31,087</u>
<u>HRSD - Virginia Initiative Plant WWTP</u>	<u>VA0081281</u>	<u>N/A</u>	<u>N/A</u>	<u>69,083</u>
<u>HRSD - Chesapeake - Elizabeth STP</u>	<u>VA0081264</u>	<u>N/A</u>	<u>N/A</u>	<u>41,450</u>
<u>HRSD Aggregate Nutrient Discharge*</u>	<u>N/A</u>	<u>4,400,000</u>	<u>3,400,000</u>	<u>310,010</u>
<u>JH Miles and Company</u>	<u>VA0003263</u>	<u>N/A</u>	<u>N/A</u>	<u>17,437</u>
^{3*} HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake - Elizabeth STP (VA0081264).				

VA.R. Doc. No. R15-4273; Filed December 19, 2016, 10:34 a.m.

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TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to subdivision B 21 of § 2.2-4002 of the Code of Virginia when promulgating regulations relating to the Virginia Breeders Fund created pursuant to § 59.1-372.

Title of Regulation: 11VAC10-130. Virginia Breeders Fund (amending 11VAC10-130-10).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7404, or email david.lermond@vrc.virginia.gov.

Summary:

The regulatory action amends the definition of "Virginia-bred Standardbred horse."

Part I
Definitions

11VAC10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

"Registered" means the completion of the process of filing an application with the commission or its designee to satisfy the requirements for participation in the Virginia Breeders Fund.

"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia resident" means a person legally required to file a resident income tax return with the Commonwealth of Virginia or a partnership, corporation, stable name or other entity that is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth.

"Virginia-bred Standardbred horse" means a registered Standardbred horse sired by a Virginia Standardbred sire, a registered Standardbred horse foaled in the Commonwealth of Virginia provided that the foal-producing mare is domiciled in the Commonwealth from July 15 through December 31 of the year in which the horse is foaled, or a registered Standardbred horse foaled in the Commonwealth provided that the foal-producing mare is bred back that same breeding season to a Virginia Standardbred sire with the following exceptions:

1. A ~~registered Standardbred horse that is purchased in its two year old year by a Virginia resident before April 1, 2007, prior to making its first start in a nonqualifying race foal of a mare that is solely owned by a Virginia resident at the time of conception; or~~
2. A ~~registered Standardbred horse that is purchased or owned by a Virginia resident after December 31, 2004, and before April 30, 2007, provided that the horse was sired by a Virginia Standardbred sire; or foal of a mare purchased solely by a Virginia resident at a public auction.~~
3. A ~~registered Standardbred horse that was foaled in the Commonwealth of Virginia prior to April 30, 2007.~~

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that stood only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse foaled in Virginia.

"Virginia-sired Thoroughbred horse" means a registered Thoroughbred horse sired by a Virginia Thoroughbred sire,

but not foaled in Virginia or not otherwise satisfying the requirements for a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred horse breeder" means the owner or lessee listed on The Jockey Club registration papers as the owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

VA.R. Doc. No. R17-4843; Filed December 14, 2016, 2:46 p.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Final Regulation

Title of Regulation: 12VAC35-115. Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (amending 12VAC35-115-10, 12VAC35-115-30, 12VAC35-115-50, 12VAC35-115-60, 12VAC35-115-90, 12VAC35-115-100, 12VAC35-115-110, 12VAC35-115-130, 12VAC35-115-145, 12VAC35-115-150, 12VAC35-115-180, 12VAC35-115-190, 12VAC35-115-200, 12VAC35-115-210, 12VAC35-115-230; adding 12VAC35-115-105, 12VAC35-115-175, 12VAC35-115-260, 12VAC35-115-270; repealing 12VAC35-115-140, 12VAC35-115-170, 12VAC35-115-250).

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

Effective Date: February 9, 2017.

Agency Contact: Deb Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-0032, FAX (804) 371-2308, or email deb.lochart@dbhds.virginia.gov.

Summary:

The amendments (i) increase the availability and flexibility of human rights advocates for direct involvement with individuals receiving services and other critical functions by clarifying the administrative responsibilities of the department with regards to the operation of the human rights system and clarifying the roles of the human rights advocate, the local human rights committee (LHRC), and the State Human Rights Committee (SHRC); (ii) modify the regulatory responsibilities of LHRCs, which will no longer

handle administrative tasks but will have more authority to oversee treatment plans that contain restrictions on human rights; (iii) simplify the administrative processes regarding the dispute resolution process, the behavior treatment plan review, and substitute decision-making and eliminate redundant or duplicative activities; (iv) consolidate complaint processes into one section of the regulation; and (v) prohibit the use of prone restraints.

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

12VAC35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to further define and protect the rights of individuals receiving services from providers of mental health, ~~mental retardation developmental~~, or substance abuse services in Virginia. ~~The regulations require~~ This chapter requires providers of services to take specific actions to protect the rights of each individual. ~~The regulations establish~~ This chapter establishes remedies when rights are violated or are in dispute, and ~~provide~~ provides a structure for support of these rights.

B. Providers subject to ~~these regulations~~ this chapter include:

1. Facilities operated by the department under Chapters 3 (§ 37.2-300 et seq.) and 7 (§ 37.2-700 et seq.) of Title 37.2 of the Code of Virginia;
2. Sexually violent predator programs established under § 37.2-909 of the Code of Virginia;
3. Community services boards that provide services under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
5. Public or private providers that operate programs or facilities licensed by the department under Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia except those operated by the Department of Corrections; and
6. Any other providers receiving funding from the department. Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1431-1444, that are subject to ~~these regulations~~ this chapter solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of ~~these regulations~~ this chapter.

C. Unless ~~another law takes precedence~~ otherwise provided by law, these regulations apply this chapter applies to all

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individuals who are receiving services from a public or private provider of services operated, licensed, or funded by the Department of Behavioral Health and Developmental Services, except those operated by the Department of Corrections.

D. ~~These regulations apply~~ This chapter applies to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine ~~these regulations are~~ this chapter is not applicable to them. The exemption ~~must~~ shall be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.

12VAC35-115-30. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, ~~mental retardation~~ intellectual disability, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies; professionally accepted standards of practice; or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

["Administrative hearing" means an administrative proceeding held pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.]

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization ~~must~~ shall be voluntary. To be voluntary, the authorization ~~must~~ shall be given by the individual receiving services or his authorized representative freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or ~~these regulations~~ this chapter to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under ~~these regulations~~ this chapter is limited to decisions pertaining to the designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Board" means the Board of Behavioral Health and Developmental Services.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, ~~mental retardation developmental~~, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of ~~these regulations~~ this chapter or a provider's policies and procedures related to ~~these regulations~~ this chapter.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services.

Consent ~~must~~ shall be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by ~~these regulations~~ this chapter, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (~~Work~~) and 12VAC35-115-130 (~~Research~~). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; and

3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy. ~~For the purpose of these regulations, the governing body of a CSB means the public body established according to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, and shall include administrative policy community services boards, operating community services boards, local government departments with policy advisory boards, and the board of a behavioral health authority.~~

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;
3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and
4. Other activities contained within the definition of health care operations in ~~the Standards for Privacy of Individually Identifiable Health Information~~, 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in ~~the Standards for Privacy of Individually Identifiable Health Information~~, 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. [~~See 12VAC35-115-80 B~~] (~~Confidentiality~~).

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

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"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See [~~12VAC35-115-250~~ 12VAC35-115-260] C.

"Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in applied behavioral analysis who are not involved in the development of the plan or directly providing services to the individual.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative [2] to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

~~"Inspector general" means a person appointed by the Governor to provide oversight by inspecting, monitoring, and reviewing the quality of services that providers deliver.~~

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a [licensed] physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or ~~certified~~ [licensed] psychiatric nurse ~~specialist practitioner~~.

~~"Local Human Rights Committee human rights committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. See [12VAC35-115-250-D 12VAC35-115-270 A] for membership and duties.~~

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding

those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of ~~a person~~ an individual receiving care or treatment for mental illness, ~~mental retardation~~ intellectual disability, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under ~~these regulations~~ this chapter.

"Peer-on-peer aggression" means a physical act, verbal threat, or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.

"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) ~~Act~~ and the Developmental Disabilities Assistance and Bill of Rights Act (DD) ~~Act~~. The protection and advocacy agency is the ~~Virginia Office for Protection and Advocacy~~ disAbility Law Center of Virginia (dLCV).

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting and analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.2-402 of the Code of Virginia and 12VAC35-180.)

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"SCC" means a specially constituted committee serving an intermediate care facility [for individuals with intellectual disabilities] as described in the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (42 CFR 483.440(f)(3)).

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated or funded by the department.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in ~~12VAC35-115-250 E~~ 12VAC35-115-270 [C]. [See] ~~12VAC35-115-250 E~~ [~~12VAC35-115-270 C 8~~ for membership and duties].

~~"State Human Rights Director~~ human rights director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed [for the position] in ~~12VAC35-115-250 F~~ 12VAC35-115-260 D.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment ~~must~~ shall conform to current acceptable professional practice.

Part III

Explanation of Individual Rights and Provider Duties

12VAC35-115-50. Dignity.

A. Each individual has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in ~~these regulations~~ this chapter, except as specifically limited ~~herein~~ in this chapter or otherwise by law. Each individual has a right to have services that he receives respond to his needs and preferences and be person-centered. Each individual also has the right to be protected, respected, and supported in exercising these rights.

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Providers shall not partially or totally take away or limit these rights solely because an individual has a mental ~~illness,~~ ~~mental retardation,~~ health or substance use disorder or an intellectual disability and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

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

1. Use his preferred or legal name. The use of an individual's preferred name may be limited when a licensed professional makes the determination that the use of the name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress, and recovery. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.
2. Be protected from harm including abuse, neglect, and exploitation.
3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.
4. Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the Office of the State Inspector General (§ 2.2-308 of the Code of Virginia), and employees of the protection and advocacy agency.
5. Be provided with general information about program services, policies, and rules in writing and in the manner, format and language easily understood by the individual.
6. Be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

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

1. Have sufficient and suitable clothing for his exclusive use.
2. Receive nutritionally adequate, varied, and appetizing meals that are prepared and served under sanitary conditions, are served at appropriate times and temperatures, and are consistent with any individualized diet program.
3. Live in a humane, safe, sanitary environment that gives each individual, at a minimum:

- a. Reasonable privacy and private storage space;
- b. An adequate number of private, operating toilets, sinks, showers, and tubs that are designed to accommodate individuals' physical needs;
- c. Direct outside air provided by a window that opens or by an air conditioner;
- d. Windows or skylights in all major areas used by individuals;
- e. Clean air, free of bad odors; and
- f. Room temperatures that are comfortable year round and compatible with health requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Have or refuse visitors.

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

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

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

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

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

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

D. The provider's duties.

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

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

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

a. Policies and procedures governing harm, abuse, neglect, and exploitation of individuals receiving their services shall require that, as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by ~~these regulations, this chapter~~ shall immediately report this information directly to the director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12VAC35-115-60. Services.

A. Each individual receiving services shall receive those services according to law and sound therapeutic practice.

B. The provider's duties.

1. Providers shall develop, carry out, and regularly monitor policies and procedures prohibiting discrimination in the provision of services. Providers shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination [~~on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay~~]. These policies and procedures shall require, at a minimum, the following:

~~a. An individual or anyone acting on his behalf may complain to the director if he believes that his services have been limited or denied due to discrimination.~~

~~b. If an individual complains of discrimination, the director shall assure that an appropriate investigation is conducted immediately. The director shall make a decision, take action, and document the action within 10 working days of receipt of the complaint.~~

~~e. A written copy of the decision and the director's action shall be forwarded to the individual and his authorized representative, the human rights advocate, and any employee or employees involved.~~

~~d. If the individual or his authorized representative is not satisfied with the director's decision or action, he may file a petition for an LHRC hearing under 12VAC35-115-180.~~

2. Providers shall ensure that all services, including medical services and treatment, are at all times delivered in accordance with sound therapeutic practice. Providers may deny or limit an individual's access to services if sound therapeutic practice requires limiting the service to individuals of the same sex or similar age, disability, or legal status.

3. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures shall:

a. Identify what caregivers may do to respond to an emergency;

b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention;

c. Require that the director immediately notify the individual's authorized representative and the advocate if an emergency results in harm or injury to any individual; and

- d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.
- 4. Providers shall assign a specific person or group of persons to carry out each of the following activities:
 - a. Medical, mental health, and behavioral screenings and assessments, as applicable, upon admission and during the provision of services;
 - b. Preparation, implementation, and ~~appropriate changes~~ modifications to an ~~individual's services plan~~ ISP based on the ongoing review of the medical, mental, and behavioral needs of the individual;
 - c. Preparation and implementation of an individual's discharge plan; and
 - d. Review of every use of seclusion or restraint by a qualified professional who is involved in providing services to the individual.
- 5. Providers shall not deliver any service to an individual without ~~a services plan~~ an ISP that is tailored specifically to the needs and expressed preferences of the individual and, in the case of a minor, the minor and the minor's parent or guardian or other person authorized to consent to treatment pursuant to § 54.1-2969 A of the Code of Virginia. Services provided in response to emergencies or crises shall be deemed part of the ~~services plan~~ ISP and thereafter documented in the ~~individual's services plan~~ ISP.
- 6. Providers shall write the ~~services plan~~ ISP and discharge plan in clear, understandable language.
- 7. When preparing or changing an ~~individual's services~~ ISP or discharge plan, providers shall ensure that all services received by the individual are integrated. With the individual's or the individual's authorized representative's authorization, providers may involve family members in services and discharge planning. When the individual or his authorized representative requests such involvement, the provider shall take all reasonable steps to do so. In the case of services to minors, the parent or guardian or other person authorized to consent to treatment pursuant to § 54.1-2969 A of the Code of Virginia shall be involved in service and discharge planning.
- 8. Providers shall ensure that the entries in an individual's services record are at all times authentic, accurate, complete, timely, and pertinent.

12VAC35-115-90. Access to and amendment of services records.

- A. With respect to his own services record, each individual and his authorized representative has the right to:
 - 1. See, read, and get a copy of his own services record, except information that is privileged pursuant to § 8.01-581.17 of the Code of Virginia, and information compiled by the provider in reasonable anticipation of or for use in a civil, criminal, or administrative action or proceeding;

- 2. Let certain other people see, read, or get a copy of his own services record if the individual is restricted by law from seeing, reading, or receiving a copy;
- 3. Challenge, request to amend, or receive an explanation of anything in his services record; and
- 4. Let anyone who sees his record, regardless of whether amendments to the record have been made, know that the individual has tried to amend the record or explain his position and what happened as a result.

~~B. Except in the following circumstances, With respect to the services records of minors must have their parent's or guardian's permission before they can access their services record:~~

- 1. A minor must have the permission of a parent, guardian, or other person standing in loco parentis before he can access his services record. He may access his services record without the this permission of a parent only if the records pertain to treatment for sexually transmitted or reportable contagious diseases, family planning or pregnancy, outpatient care, treatment or rehabilitation for substance use disorders, mental illness or emotional disturbance, or inpatient psychiatric hospitalization when a minor is 14 years of age or older and has consented to the admission.
- 2. A parent may access his minor child's services record unless prohibited by 42 CFR Part 2, parental rights have been terminated, a court order provides otherwise, or the minor's treating physician or clinical psychologist has determined, in the exercise of professional judgment, that ~~the~~ disclosure to the parent would be reasonably likely to cause substantial harm to the minor or another person.

C. The provider's duties.

- 1. Providers shall tell each individual and his authorized representative how he can access and request amendment of his own services record.
- 2. Providers shall permit each individual to see his services record when he requests it and to request amendments if necessary.
 - a. Access to all or a part of an individual's services record may be denied or limited only if a physician or a clinical psychologist involved in providing services to the individual talks to the individual, examines the services record as a result of the individual's request for access, and signs and puts in the services record permanently a written statement that he thinks access to the services record by the individual at this time would be reasonably likely to endanger the life or physical safety of the individual or another person or that the services record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to the referenced person. The physician or clinical psychologist ~~must~~ shall also tell

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the individual as much about his services record as he can without risking harm to the individual.

b. If access is denied in whole or in part, the provider shall give the individual or his authorized representative a written statement that explains the basis for the denial, the individual's review rights, as set forth in the following subdivisions, how he may exercise them, and how the individual may file a complaint with the provider or the ~~United States~~ U.S. Department of Health and Human Services, if applicable. If restrictions ~~or time limits~~ are placed on access, the individual shall be notified of the restrictions ~~and time limits~~ and conditions for their removal. These ~~time limits~~ [restrictions and] conditions also shall be specified in the services record.

(1) If the individual requests a review of denial of access, the provider shall designate a physician or clinical psychologist who was not directly involved in the denial to review the decision to deny access. The physician or clinical psychologist ~~must~~ shall determine within a reasonable period of time whether or not to deny the access requested in accordance with the standard in subdivision 2 a of this subsection. The provider ~~must~~ shall promptly provide the individual notice of the physician's or psychologist's determination and provide or deny access in accordance with that determination.

(2) At the individual's option, the individual may designate at his own expense a reviewing physician or clinical psychologist who was not directly involved in the denial to review the decision to deny access in accordance with the standard in subdivision 2 a of this subsection. If the individual chooses this option, the provider is not required to designate a physician or clinical psychologist to review the decision.

c. If the provider limits or refuses to let an individual see his services record, the provider shall also notify the advocate and tell the individual that he can ask to have a lawyer or authorized insurer of his choice see his record. If the individual makes this request, the provider shall disclose the record to that lawyer or authorized insurer (§ 8.01-413 of the Code of Virginia).

3. Providers shall, without charge, give individuals any help they may need to read and understand their services record and request amendments to it.

4. If an individual asks to challenge, amend, or explain any information contained in his services record, the provider shall investigate and file in the services record a written report concerning the individual's request.

a. If the report finds that the services record is incomplete, inaccurate, not pertinent, not timely, or not necessary, the provider shall:

(1) Either mark that part of the services record clearly to say so, or else remove that part of the services record and

file it separately with an appropriate cross reference to indicate that the information was removed;

(2) Not disclose the original services record without separate specific authorization or legal authority (e.g., if compelled by subpoena or other court order);

(3) Obtain the individual's identification of and agreement to have the provider notify the relevant persons of the amendment; and

(4) Promptly notify in writing all persons who have received the incorrect information and all persons identified by the individual that the services record has been corrected.

b. If a request to amend the services record is denied, the provider shall give the individual a written statement containing the basis for the denial and notify the individual of his right to submit a statement of disagreement and how to submit such a statement. The provider shall also give the individual (i) a statement that if a statement of disagreement is not submitted that the individual may request the provider to disclose the request for amendment and the denial with future disclosures of information and (ii) a description of how the individual may complain to the provider or the Secretary of Health and Human Services, if applicable. Upon request, the provider shall file in the services record the individual's statement ~~explaining his position of disagreement~~. If needed, the provider shall help the individual to write this statement. If a statement is filed, the provider shall:

(1) Give all persons who have copies of the record a copy of the individual's statement.

(2) Clearly note in any later disclosure of the record that it is disputed and include a copy of the statement with the disputed record.

12VAC35-115-100. Restrictions on freedoms of everyday life.

A. From admission until discharge from a service, each individual is entitled to:

1. Enjoy all the freedoms of everyday life that are consistent with his need for services, his protection, and the protection of others, and that do not interfere with his services or the services of others. These freedoms include:

a. Freedom to move within the service setting, its grounds, and the community;

b. Freedom to communicate, associate, and meet privately with anyone the individual chooses;

c. Freedom to have and spend personal money;

d. Freedom to see, hear, or receive television, radio, books, and newspapers, whether privately owned or in a library or public area of the service setting;

e. Freedom to keep and use personal clothing and other personal items;

- f. Freedom to use recreational facilities and enjoy the outdoors; and
- g. Freedom to make purchases in canteens, vending machines, or stores selling a basic selection of food and clothing.

2. Receive services in that setting and under those conditions that are least restrictive of his freedom.

B. The provider's duties.

1. Providers shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.

2. Providers shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.

3. Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to ~~these regulations~~ this chapter or otherwise required by law. If a provider imposes a restriction pursuant to this chapter, except as provided in 12VAC35-115-50, the following conditions shall be met:

a. A qualified professional involved in providing services has, in advance, assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

b. A qualified professional involved in providing services has, in advance, determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death.

c. A qualified professional involved in providing services has, in advance, documented in the individual's services record the specific reason for the restriction.

d. A qualified professional involved in providing services has explained, and provided written notice so that the individual can understand, the reason for the restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible.

e. A qualified professional regularly reviews the restriction and that the restriction is discontinued when the individual has met the criteria for removal.

~~4.~~ 4. If a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose the restriction, the restriction shall be documented in the individual's services record.

5. Providers shall obtain approval of the LHRC of any restriction imposed on an individual's rights under this subsection or 12VAC35-115-50 that lasts longer than seven days or is imposed [~~multiple~~ three or more] times during a 30-day time period. If the LHRC finds that the

restriction is not being implemented in accordance with this chapter, the director shall be notified, and the LHRC shall provide recommendations.

~~4.~~ 6. Providers may develop and enforce written program rules, but only if the rules do not conflict with ~~these regulations~~ this chapter or any ~~individual's services plan~~ ISP and are needed to maintain a safe and orderly environment.

~~5.~~ 7. Providers shall, in the development of these program rules:

a. Get as many suggestions as possible from all individuals who are expected to obey the rules;

b. Apply these rules in the same way to each individual;

c. Give the rules to and review them with each individual and his authorized representative in a way that the individual can understand them, including explaining possible consequences for violating them;

d. Post the rules in summary form in all areas to which individuals and their families have regular access;

e. Submit the rules to the LHRC for review and approval upon request of the advocate or LHRC; and

f. Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.

12VAC35-115-105. Behavioral treatment plans.

A. A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.

B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.

C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which [shall] ensure that:

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

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

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3. Behavioral treatment plans are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.

D. [Providers In addition to any other requirements of 42 CFR 483.440(f)(3), providers that are intermediate care facilities for individuals with intellectual disabilities] shall submit any behavioral treatment plan that involves the use of restraint or time out [in an intermediate care facility], and its independent review committee approval, to the SCC under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation.

E. Providers [other than intermediate care facilities for individuals with intellectual disabilities] shall submit any behavioral treatment plan that [does not require SCC approval involves the use of restraint or time out], and its independent review committee approval, to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.

F. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.

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

H. Providers shall not use seclusion in a behavioral treatment plan.

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

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

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

C. The provider's duties.

1. Providers shall meet with the individual or his authorized representative upon admission to the service to discuss and document in the individual's services record [7] his preferred interventions in the event his behaviors or symptoms become a danger to himself or others and under what circumstances, if any, the intervention may include seclusion, restraint, or time out.

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

trauma [,] and shall flag the record to alert and communicate this information to staff.

3. Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

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

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

6. Providers shall not use a restraint that places the individual's body in a prone (face down) position.

~~6. 7.~~ Providers shall not use seclusion or restraint for any behavioral, medical, or protective purpose unless other less restrictive techniques have been considered and documentation is placed in the individual's services plan ISP that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency.

~~7. 8.~~ Providers that use seclusion, restraint, or time out shall develop written policies and procedures that comply with applicable federal and state laws and regulations, accreditation, and certification standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include at least the following requirements:

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

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

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

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

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

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

a. Whenever an inconsistency exists between ~~these regulations~~ this chapter and federal laws or regulations,

accreditation or certification standards, or the requirements of third party payers, the provider shall comply with the higher standard.

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

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

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

12. Providers shall ensure that review and approval by a qualified professional for the use or continuation of restraint for medical or protective purposes is documented in the individual's services record. Documentation includes:

- a. Justification for any restraint;
- b. Time-limited approval for the use or continuation of restraint; and
- c. Any physical or psychological conditions that would place the individual at greater risk during restraint.

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

- a. Conducted a face-to-face assessment of the individual placed in seclusion or mechanical restraint and documented that alternatives to the proposed use of seclusion or mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;
- b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;
- c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;
- d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and
- e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's

right to a fair review of whether the mechanical restraint or seclusion was permissible.

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

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

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

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

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

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

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

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

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

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

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

~~d. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and by the LHRC to determine if the~~

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use of restraint has resulted in improvements in functioning of the individual.

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

12VAC35-115-130. Research.

A. Each individual has a right to choose to participate or not participate in human research.

B. The provider's duties.

1. Providers shall obtain prior, written, informed consent of the individual or his authorized representative before any individual begins to participate in human research unless the research is exempt under § 32.1-162.17 of the Code of Virginia.

2. Providers shall comply with all other applicable state and federal laws and regulations regarding human research, including the provisions under Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 and § 37.2-402 of the Code of Virginia ~~and the regulations adopted under § 37.2-402 of the Code of Virginia.~~

3. Providers shall obtain review and approval from an institutional review board or research review committee prior to performing or participating in a human research protocol. Documentation of this review and approval shall be maintained and made available on request by the individual or his authorized representative.

4. Prior to participation by individuals in any human research project, the provider shall inform and provide a copy of the institutional review board or research review committee approval to the LHRC. Once the research has been initiated, the provider shall update the LHRC periodically on the status of the individual's participation.

12VAC35-115-140. ~~Complaint and fair hearing.~~ (Repealed.)

~~A. Each individual has a right to:~~

~~1. Complain that the provider has violated any of the rights assured under these regulations;~~

~~2. Have a timely and fair review of any complaint according to the procedures in Part V (12VAC35-115-150 et seq.) of this chapter;~~

~~3. Have someone file a complaint on his behalf;~~

~~4. Use these and other complaint procedures; and~~

~~5. Complain under any other applicable law, including complain to the protection and advocacy agency.~~

~~B. The provider's duties.~~

~~1. If an individual makes a complaint, the provider shall make every attempt to resolve the complaint at the earliest possible step.~~

~~2. Providers shall not take, threaten to take, permit, or condone any action to retaliate against anyone filing a complaint or prevent anyone from filing a complaint or helping an individual to file a complaint.~~

~~3. Providers shall assist the complainant in understanding the full complaint process, the options for resolution including the formal and informal processes, and the confidentiality elements involved.~~

Part IV

Substitute Decision Making

12VAC35-115-145. Determination of capacity to give consent or authorization.

If the capacity of an individual to consent to treatment, services, or research, or to authorize the disclosure of information is in doubt, the provider shall obtain an evaluation ~~from~~ conducted by or under the supervision of a licensed professional who is qualified by expertise, training, education, or credentials and not directly involved with the individual to determine whether the individual has capacity to consent or to authorize the disclosure of information.

1. Capacity evaluations shall be obtained for all individuals who may lack capacity, even if they request that an authorized representative be designated or agree to submit to a recommended course of treatment.

2. In conducting this evaluation, the professional may seek comments from representatives accompanying the individual pursuant to 12VAC35-115-70 A 4 about the individual's capacity to consent or to authorize disclosure.

3. Providers shall determine the need for an evaluation of an individual's capacity to consent or authorize disclosure of information and the need for a substitute decision maker whenever the individual's condition warrants, the individual requests such a review, at least every six months, and at discharge, except for individuals receiving acute inpatient services.

a. If the individual's record indicates that the individual is not expected to obtain or regain capacity, the provider shall document annually that it has reviewed the individual's capacity to make decisions and whether there has been any change in that capacity.

b. Providers of acute inpatient services shall determine the need for an evaluation of an individual's capacity to consent or authorize disclosure of information whenever the individual's condition warrants or at least at every treatment team meeting. Results of such reviews shall be documented in the treatment team notes and communicated to the individual and his authorized representative.

4. Capacity evaluations shall be conducted in accordance with accepted standards of professional practice and shall indicate the specific type of decision for which the individual's capacity is being evaluated (e.g., medical) and shall indicate what specific type of decision the individual has or does not have the capacity to make. Capacity evaluations shall address the type of supports that might be used to increase the individual's decision-making capabilities.

5. If the individual or his family objects to the results of the ~~qualified~~ licensed professional's determination, the provider shall immediately inform the human rights advocate.

a. If the individual or family member wishes to obtain an independent evaluation of the individual's capacity, he may do so at his own expense and within reasonable timeframes consistent with his circumstances. If the individual or family member cannot pay for an independent evaluation, the individual may request that the LHRC consider the need for an independent evaluation pursuant to 12VAC35-115-200 B. The provider shall take no action for which consent or authorization is required, except in an emergency, pending the results of the independent evaluation. The provider shall take no steps to designate an authorized representative until the independent evaluation is complete.

b. If the independent evaluation is consistent with the provider's evaluation, the provider's evaluation is binding, and the provider shall implement it accordingly.

c. If the independent evaluation is not consistent with the provider's evaluation, the matter shall be referred to the LHRC for review and decision under 12VAC35-115-200 ~~through 12VAC35-115-250~~ [and 12VAC35-115-210].

Part V

Complaint Resolution, Hearing, and Appeal Procedures

12VAC35-115-150. General provisions.

~~A. [Any action taken by the judicial system or Court orders or orders or decisions entered after an] administrative hearing [bodies is are] not subject to review under the human rights complaint resolution process.~~

~~A. B.~~ The parties to any complaint are the individual and the director. Each party can also have anyone else represent him during resolution of the complaint. The director shall make every effort to resolve the complaint at the earliest possible stage.

~~B. C. Meetings, reviews, Reviews~~ and hearings will generally be closed to other people unless the individual making the complaint requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). ~~±~~ The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (see § 2.2-3711 of the Code of Virginia).

~~2. If any person alleges that implementation of an LHRC recommendation would violate the individual's rights or those of other individuals, the person may file a petition for a hearing with the SHRC, according to 12VAC35-115-210.~~

~~C. D.~~ In no event shall a pending hearing, review, or appeal prevent a director from taking corrective action based on the

advice of the provider's legal counsel that such action is required by law or ~~he otherwise~~ if the director thinks such action is correct and justified.

~~D. E.~~ The LHRC or SHRC, on the motion of any party or on its own motion, may, for good cause, extend any time periods before or after the expiration of that time period. No director may extend any time periods for any actions he is required to take under these procedures without prior approval of the LHRC or SHRC.

~~E. F.~~ Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a party to act within that time period shall waive that party's further rights under these procedures.

~~F. G.~~ In making ~~their~~ recommendations regarding complaint resolution, the LHRC and the SHRC shall identify any rights or regulations that the provider violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under ~~these regulations~~ this chapter.

~~G. H.~~ If it is impossible to carry out the recommendations of the LHRC or the SHRC within a specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.

~~H. I.~~ Any action plan submitted by the director or commissioner in the course of these proceedings shall fully address final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, that prevent efforts to fully remedy the violation.

~~I. J.~~ All communication with the individual during the complaint resolution process shall be in the manner, format, and language most easily understood by the individual.

12VAC35-115-170. ~~Complaint resolution process. (Repealed.)~~

~~A. Anyone who believes that a provider has violated an individual's rights under these regulations may report it to the director or the human rights advocate for resolution.~~

~~1. If the report is made only to the director, the director or his designee shall immediately notify the human rights advocate. If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.~~

~~2. If the report is made only to the human rights advocate, the human rights advocate shall immediately notify the director. If the report is made on a weekend or holiday, then the human rights advocate shall notify the director on the next business day.~~

~~3. The human rights advocate or the director or his designee shall discuss the report with the individual and~~

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notify the individual of his right to pursue a complaint through the process established in these regulations. The steps in the informal and formal complaint process established in these regulations shall be thoroughly explained to the individual. The human rights advocate or the director or his designee shall ask the individual if he understands the complaint process and the choice that he has before asking the individual how he wishes to pursue the complaint. The individual shall then be given the choice of pursuing the complaint through the informal or formal complaint process. If the individual does not make a choice, the complaint shall be managed through the informal process.

4. The following steps apply if the complaint is pursued through the informal process:

Step 1: The director or his designee shall attempt to resolve the complaint immediately. If the complaint is resolved, no further action is required.

Step 2: If the complaint is not resolved within five working days, the director or his designee shall refer it for resolution under the formal process. The individual may extend the informal process five-day time frame for good cause. All such extensions shall be reported to the human rights advocate by the director or his designee.

5. The following steps apply if the complaint is pursued through the formal process:

Step 1: The director or his designee shall try to resolve the complaint by meeting with the individual, any representative the individual chooses, the human rights advocate, and others as appropriate within 24 hours of receipt of the complaint or the next business day if that day is a weekend or holiday. The director or his designee shall conduct an investigation of the complaint, if necessary.

Step 2: The director or his designee shall give the individual and his chosen representative a written preliminary decision and, where appropriate, an action plan for resolving the complaint within 10 working days of receiving the complaint. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 3 of this subdivision, information on how to contact the human rights advocate for assistance with the process, and a statement the complaint will be closed if the individual does not respond.

Step 3: If the individual disagrees with the director's preliminary decision or action plan, he can respond to the director in writing within five working days after receiving the preliminary decision and action plan. If the individual has not responded within five working days, the complaint will be closed.

Step 4: If the individual disagrees with the preliminary decision or action plan and reports his disagreement to

the director in writing within five working days after receiving the decision or action plan, the director shall investigate further as appropriate and shall make a final decision regarding the complaint. The director shall forward a written copy of his final decision and action plan to the individual, his chosen representative, and the human rights advocate within five working days after the director receives the individual's written response. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 5 of this subdivision, information about how to contact the human rights advocate for assistance with the process, and a statement that if the individual does not respond that the complaint will be closed.

Step 5: If the individual disagrees with the director's final decision or action plan, he may file a petition for a hearing by the LHRC using the procedures prescribed in 12VAC35-115-180. If the individual has accepted the relief offered by the director, the matter is not subject to further review.

B. If at any time during the formal complaint process the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 1 through 5 of subdivision A 5 of this section shall not be followed. Instead, the LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-180.

12VAC35-115-175. Human rights complaint process.

A. Each individual has a right to:

1. Make a complaint that the provider has violated any of the rights assured under this chapter;
2. Have a timely and fair review of any complaint in accordance with this chapter and the program's human rights complaint resolution policies and procedures;
3. Have someone file a complaint on his behalf;
4. Use these and other complaint procedures; and
5. Make a complaint under any other applicable law, including to the protection and advocacy agency.

B. The individual shall:

1. Be contacted by the director or the director's designee regarding the complaint within 24 hours;
2. Have access to a human rights advocate for assistance with the complaint;
3. Be protected from retaliation and harm;
4. Have the complaint reviewed, investigated, and resolved as soon as possible;
5. Receive a report with the director's decision and action plan within 10 working days; and

6. Be notified in writing of his right to and the process for appealing the director's decision and action plan to the LHRC.

C. Upon receipt of a complaint, providers shall:

1. Notify the department of the complaint as soon as possible, but no later than the next business day;

2. [Ensure that the director or the director's designee contacts the individual regarding the complaint within 24 hours;

3.] Initiate an impartial investigation into, or resolution of, the complaint as soon as possible, but no later than the next business day;

[~~3- 4.~~] Take all steps necessary to ensure that individuals involved in the complaint are protected from retaliation and harm;

[~~4.~~ 5.] Assist the individual making a complaint in understanding the human rights complaint process, the provider's complaint resolution policies and procedures, and the confidentiality of involved information;

[~~5.~~ 6.] Ensure that all communications to the individual are in the manner, format, and language most easily understood by the individual;

[~~6.~~ 7.] Adhere to the reporting requirements in 12VAC35-115-230; and

[~~7.~~ 8.] Report the director's decision and action plan within 10 working days to the individual, authorized representative, if applicable, and human rights advocate.

D. All providers shall have complaint resolution policies and procedures that address all of the requirements of [subsection subsections] C [and E] of this section.

E. Provider complaint resolution policies and procedures shall be in writing and approved by the department prior to implementation. The policies and procedures shall:

1. Ensure that anyone who believes that a provider has violated an individual's rights under this chapter can report it to the director or the human rights advocate for resolution;

2. Ensure that employees shall not take, threaten to take, permit, or condone any action (i) to punish or retaliate against anyone filing a complaint or (ii) to prevent anyone from filing or helping an individual file a complaint either under this chapter or with an outside entity;

3. Ensure that every attempt is made to resolve an individual's complaint as quickly as possible;

4. Provide opportunities for timely negotiation and resolution for all complaints, including the additional requirements related to abuse, neglect, or exploitation in subsection F of this section;

5. Establish a process for designating the director's responsibilities to ensure timely complaint reporting and resolution;

6. Detail the program's complaint review or investigation process, including (i) specific actions the program will take to protect the individual and gather and document relevant information and (ii) how and when the individual and his authorized representative, if applicable, will receive updates on the progress of the review;

7. Detail notification requirements and deadlines including procedures for providing:

a. The program's complaint policies and procedures to all individuals and authorized representatives at admission to service; [and]

b. Written notification to the individual regarding his right to and the process to appeal the director's decision and action plan to the LHRC; and

8. Detail staff training requirements regarding the program's complaint resolution process and requirements.

F. Additional requirements for complaints involving abuse, neglect, or exploitation:

1. The program director shall take immediate steps to protect the individual until the investigation is complete, including appropriate personnel actions.

2. Any instance of seclusion or restraint that does not comply with this chapter or an approved variance, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and the department in accordance with the requirements for reporting allegations of abuse.

3. The program director shall notify the department and authorized representative, if applicable, of an allegation of abuse or neglect within 24 hours of the receipt of the allegation.

4. The program director shall ensure that the investigation is conducted by a person trained to do investigations and who is not involved in the issues under investigation.

5. The investigator shall provide a written report of the results of the investigation of abuse or neglect to the director and to the human rights advocate within 10 working days from the date the investigation began unless an extension has been granted.

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

7. The program director shall submit the final decision and action plan, if applicable, to the individual, authorized representative, if applicable, and human rights advocate within 10 working days of its completion.

G. If the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights

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advocate shall inform the director, the provider's governing body, and the LHRC. The LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-190.

H. The director shall cooperate fully with any abuse or neglect complaint investigation conducted by a local department of social services.

I. If at any time the director has reason to suspect that the abusive, neglectful, or exploitive act is a crime and that it occurred on the program premises, the director or designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that may result.

12VAC35-115-180. Local Human Rights Committee human rights committee hearing and review procedures.

A. Any individual or his authorized representative who does not accept the relief offered by the director or disagrees with (i) a director's final decision and action plan resulting from the complaint resolution; (ii) a director's final action following a report of abuse, neglect, or exploitation; or (iii) a director's final decision following a complaint of discrimination in the provision of services may request an LHRC hearing by following the steps provided in subsections B through I of this section. Any individual or his authorized representative who disagrees with a director's final decision or action plan resulting from any complaint resolution process under this chapter may request an LHRC hearing by following the process described in this section.

B. ~~Step 1:~~ The individual or his authorized representative must shall file the petition for a hearing with the chairperson of the LHRC within 10 working days of from receipt of the director's action plan or final decision on the complaint.

1. The petition for hearing must shall be in writing. It should shall contain all facts and arguments surrounding the complaint and reference any section of the regulations this chapter that the individual believes the provider violated.

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

C. ~~Step 2:~~ The LHRC chair shall forward a copy of the petition to the director and the human rights advocate as soon as he receives it. A copy of the petition shall also be forwarded to the provider's governing body.

D. ~~Step 3:~~ Within five working days, the director shall submit to the LHRC:

1. A written response to everything contained in the petition; and
2. A copy of the entire written record of the complaint.

E. ~~Step 4:~~ The LHRC shall hold a hearing within 20 working days of receiving the petition. hearing procedures:

1. The LHRC shall hold a hearing within 20 working days of receiving the petition.

2. The parties shall have at least five working days' notice of the hearing.

~~2.~~ 3. The director or his designee shall attend the hearing.

~~3.~~ 4. The individual or his authorized representative making the complaint shall attend the hearing.

5. The hearing is an informal process and, as such, the rules of [legal proceedings evidence] are not applicable.

4. 6. At the hearing, the parties and chosen representatives and designees have the right to present witnesses and other evidence and the opportunity to be heard.

7. The hearing shall be conducted in a nonadversarial manner.

a. Each party shall be provided the opportunity to present its facts.

b. Each party shall direct questions to the LHRC rather than to the other party.

c. The LHRC shall ask questions, as appropriate, to each party.

F. ~~Step 5:~~ Within 10 working days after the hearing ends, the LHRC shall give its written findings of fact and recommendations to the parties and their representatives. Whenever appropriate, the LHRC shall identify information that it believes the director shall take into account in making decisions concerning discipline or termination of personnel.

G. ~~Step 6:~~ Within five working days of receiving the LHRC's findings and recommendations, the director shall give the individual, the individual's chosen representative, the human rights advocate, the governing body, and the LHRC a written action plan he intends to take implement to respond to the LHRC's findings and recommendations. Along with the action plan, the director shall provide written notice to the individual about the time frame timeframe for the individual's response pursuant to Step 7 (subsection H of this section) and a statement that if the individual does not respond that, then the complaint will be closed. The plan shall not be implemented for five working days after it is submitted, unless the individual agrees to its implementation sooner.

H. ~~Step 7:~~ The individual, his chosen representative, the human rights advocate, or the LHRC may object to the action plan within five working days by stating the objection and what the director can do to resolve the objection.

1. If an objection is made, the director may not implement the action plan, or until the objection is resolved. The provider may, however, implement only that any portion of the plan that to which the individual making the complaint agrees to, until he resolves the objection as requested or appeals to the SHRC for a decision under 12VAC35-115-210.

2. If no one objects to the action plan, the director shall begin to implement the plan on the sixth working day after he submitted it, or as otherwise provided in the plan.

I. ~~Step 8:~~ If an objection to the action plan is made and the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following its receipt by the director, the individual may appeal to the SHRC under 12VAC35-115-210.

12VAC35-115-190. Special procedures for emergency hearings by the LHRC.

A. If the human rights advocate informs the LHRC of a substantial risk that serious and irreparable harm will result if a complaint is not resolved immediately, the LHRC shall hold and conclude a preliminary hearing within 72 hours of receiving this information.

1. The director or his designee and the human rights advocate shall attend the hearing. The individual and his authorized representative may attend the hearing.

2. The hearing shall be conducted according to the procedures in 12VAC35-115-180, but it shall be ~~concluded~~ conducted on an expedited basis.

B. At the end of the hearing, the LHRC shall make preliminary findings and, if a violation is found, shall make preliminary recommendations to the director, the provider, and the provider's governing body.

C. The director shall formulate and carry out an action plan within 24 hours of receiving the LHRC's preliminary recommendations. A copy of the plan shall be sent to the human rights advocate, the individual, his authorized representative, and the governing body.

D. If the individual or the human rights advocate objects within 24 hours to the LHRC findings or recommendations or to the director's action plan, the LHRC shall conduct a full hearing within five working days of the objection, following the procedures outlined in 12VAC35-115-180. This objection shall be made in writing to the LHRC chairperson, with a copy sent to the director.

E. Either party may appeal the LHRC's decision to the SHRC under 12VAC35-115-210.

12VAC35-115-200. Special procedures for LHRC reviews involving consent and authorization.

A. The individual, his authorized representative, or anyone acting on the individual's behalf may request in writing that the LHRC review the following situations and issue a decision:

1. If an individual ~~his authorized representative~~ objects at any time to the appointment of a specific person as his authorized representative or any decision for which consent or authorization is required and has been given by his authorized representative, other than a legal guardian, he may ask the LHRC to decide whether his capacity was properly evaluated, the authorized representative was

properly appointed, or his authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, and if unknown or unclear in the individual's best interests.

a. The provider shall take no action for which consent or authorization is required if the individual objects, except in an emergency or as otherwise permitted by law, pending the LHRC review.

b. If the LHRC determines that the individual's capacity was properly evaluated, the authorized representative is properly designated, or the authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, or if unknown or unclear in the individual's best interests, then the provider may proceed according to the decision of the authorized representative.

c. If the LHRC determines that the individual's capacity was not properly evaluated or the authorized representative was not properly designated, then the provider shall take no action for which consent is required except in an emergency or as otherwise required or permitted by law; until the capacity review and authorized representative designation is are properly done.

d. If the LHRC determines that the authorized representative's decision was not made based on the individual's basic values and any ~~preferences~~ preference previously expressed by the individual to the extent known, and if unknown or unclear, made in the individual's best interests, then the provider shall take steps to remove the authorized representative pursuant to 12VAC35-115-146.

2. If an individual or his family member has obtained an independent evaluation of the individual's capacity to consent to treatment or services or to participate in human research ~~under 12VAC35-115-70~~, or to authorize the disclosure of information under ~~12VAC35-115-90~~ 12VAC35-115-80, and the opinion of that evaluator conflicts with the opinion of the provider's evaluator, the LHRC may be requested to decide which evaluation will control.

a. If the LHRC agrees that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director may begin or continue treatment or research or disclose information, but only with the appropriate consent or authorization of the authorized representative. The LHRC shall advise the individual of his right to appeal this determination to the SHRC under 12VAC35-115-210.

b. If the LHRC does not agree that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director shall not

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begin any treatment or research, or disclose information without the individual's consent or authorization, or shall take immediate steps to discontinue any actions begun without the consent or authorization of the individual. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.

3. If a director makes a decision that affects an individual and the individual believes that the decision requires his personal consent or authorization or that of his authorized representative, he may object and ask the LHRC to decide whether consent or authorization is required.

Regardless of the individual's capacity to consent to treatment or services or to authorize disclosure of information, if the LHRC determines that a decision made by a director requires consent or authorization that was not obtained, the director shall immediately ~~rescind the stop~~ such action unless and until such consent or authorization is obtained. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.

B. Before making such a decision, the LHRC shall review the action proposed by the director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's or his authorized representative's reasons for objecting to that determination. To facilitate its review, the LHRC may ask that a physician or licensed clinical psychologist not employed by the provider evaluate the individual at the provider's expense and give an opinion about his capacity to consent to treatment or to authorize disclosure of information.

The LHRC shall notify all parties and the human rights advocate of the decision within 10 working days of the initial request.

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

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

1. An LHRC's final findings of fact, conclusions, and recommendations following a hearing;
2. A director's final action plan following an LHRC hearing;
3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, services, or research or to authorize disclosure of information; or
4. An LHRC's final decision concerning whether consent or authorization is needed for the director to take a certain action.

The steps for filing an appeal are provided in subsections B [~~through~~, C, and] FD of this section.

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

1. The appeal shall explain the reasons for disagreement with the final decision or action ~~is not satisfactory plan~~.

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

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

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

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

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

1. The original petition or information filed with the LHRC and any statement filed by the director in response;
2. Parts of the individual's services record that the LHRC considered and any other parts of the services record submitted to, but not considered by, the LHRC that either party considers relevant;
3. All written documents and materials presented to and considered by the LHRC, including any independent evaluations conducted;
4. A tape or transcript of the LHRC proceedings, if available;
5. The LHRC's findings of fact, conclusions, and recommendations;
6. The director's action plan, if any; and
7. Any written objections to the action plan or its implementation.

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

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

2. [The SHRC shall notify the Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) of the appeal.]

3.] The following rules govern appeal hearings:

- a. The SHRC shall not hear any new evidence.
- b. The SHRC is bound by the LHRC's findings of fact ~~subject to subdivision 3 of this subsection~~ unless it makes a determination that those findings of fact are clearly wrong or that the hearing procedures of the LHRC were inadequate.
- c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of ~~these regulations~~ this chapter and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.
- d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their positions and answer questions the SHRC may have.
- [~~e. The SHRC shall notify the Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) of the appeal.~~

~~3.~~ 4.] If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may:

- a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or
- b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 working days of the SHRC's initial hearing.

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

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

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

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

I. ~~Step 8:~~ Final determination regarding the action plan shall be as follows:

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

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

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

Part VII
Reporting Requirements

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

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

1. The director of a facility operated by the department shall report allegations of abuse and neglect via the [department's] web-based reporting application in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall report each allegation of abuse or neglect ~~to the assigned human rights advocate~~ via the [department's] web-based reporting application within 24 hours ~~from the~~ of receipt of the allegation (see ~~12VAC35-115-50~~ 12VAC35-115-175).

3. The investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate [via the department's web-based reporting application] within 10 working days from the date the investigation began unless an ~~exemption extension~~ extension has been granted ~~by the department~~ (see ~~12VAC35-115-50~~ 12VAC35-115-175). This report shall include:

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- a. Whether abuse, neglect, or exploitation occurred;
- b. The type of abuse; and
- c. Whether the act resulted in physical or psychological injury.

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

1. The director of a facility operated by the department shall report to the department deaths and serious injuries in accordance with all applicable operating instructions issued by the commissioner or his designee.
2. The director of a service licensed or funded by the department shall report deaths and serious injuries in writing to the department within 24 hours of discovery and by telephone to the authorized representative within 24 hours.
3. All reports of death and serious injuries shall include:
 - a. Date and place of the death or serious injury;
 - b. Nature of the injuries and treatment required; and
 - c. Circumstances of the death or serious injury.

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

1. The director of a facility operated by the department shall report each instance of seclusion or restraint or both in accordance with all applicable operating instructions issued by the commissioner or his designee.
2. The director of a service licensed or funded by the department shall submit an annual report of each instance of seclusion or restraint or both by the 15th of January each year, or more frequently if requested by the department.
3. Each instance of seclusion or restraint or both shall be compiled on a monthly basis and the report shall include:
 - a. ~~Type(s)~~ Type or types, to include:
 - (1) Physical restraint (manual hold);
 - (2) Mechanical restraint;
 - (3) Pharmacological restraint; ~~and or~~
 - (4) Seclusion.
 - b. Rationale for the use of seclusion or restraint, to include:
 - (1) Behavioral purpose;
 - (2) Medical purpose; or
 - (3) Protective purpose.
 - c. Duration of the seclusion or restraint, as follows:
 - (1) The duration of seclusion and restraint used for behavioral purposes is defined as the actual time the individual is in seclusion or restraint from the time of initiation of seclusion or restraint until the individual is released.

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

4. Any instance of seclusion or restraint that does not comply with ~~these regulations~~ this chapter or approved variances, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and ~~the assigned human rights advocate to the department via the [department's] web-based reporting application~~ within 24 hours.

D. ~~The director~~ Providers shall ~~provide report~~ to the human rights advocate and the LHRC [when requested] information on ~~the type, resolution level, and findings of each complaint of a human rights violation, including a description and its conclusions, and report on~~ implementation of variances, in accordance with the LHRC meeting schedule [~~or as requested by the advocate~~].

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

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

1. The department shall provide the compiled data in writing or by electronic means.
2. The department shall remove all provider-identifying information and all information that could be used to identify a person as an individual receiving services.

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

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

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

Part IX

Responsibilities and Duties

12VAC35-115-250. ~~Offices, composition and duties.~~ (Repealed.)

~~A. Providers and their directors shall:~~

1. Identify a person or persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.
2. Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in these regulations for reporting allegations of abuse, neglect, or exploitation.
3. Require competency based training on these regulations upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file.
4. Take all steps necessary to assure compliance with these regulations in all services provided.
5. Communicate information about the availability of a human rights advocate to individuals and authorized representatives.
6. Assure one LHRC affiliation within the region as defined by the SHRC. The SHRC may require multi site providers to have more than one LHRC affiliation within a region if the SHRC determines that additional affiliations are necessary to protect individuals' human rights.
7. Assure that the appropriate staff attend LHRC meetings in accordance with the LHRC meeting schedule to report on human rights activities, to impart information to the LHRC at the request of the human rights advocate or LHRC, and discuss specific concerns or issues with the LHRC.
8. Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' human rights and make sure that all employees cooperate with the human rights advocate and the LHRC in carrying out their duties under these regulations. Notwithstanding the requirements for complaints pursuant to Part V (12VAC35-115-150 et seq.) of this chapter, the provider shall submit a written response indicating intended action to any written recommendation made by the human rights advocate or LHRC within 15 days of the receipt of such recommendation.
9. Provide the advocate unrestricted access to individuals and individual services records whenever the human rights advocate deems access necessary to carry out rights protection, complaint resolution, and advocacy.
10. Submit to the human rights advocate for review and comment any proposed policies, procedures, or practices that may affect individual human rights.
11. Comply with requests by the SHRC, LHRC, and human rights advocate for information, policies, procedures, and written reports regarding compliance with these regulations.
12. Name a liaison to the LHRC, who shall give the LHRC suitable meeting accommodations, clerical support and equipment, and assure the availability of records and

employee witnesses upon the request of the LHRC. Oversight and assistance with the LHRC's substantive implementation of these regulations shall be provided by the SHRC. See subsection E of this section.

13. Submit applications for variances to these regulations only as a last resort.

14. Post in program locations information about the existence and purpose of the human rights program.

15. Not influence or attempt to influence the appointment of any person to an LHRC associated with the provider or director.

16. Perform any other duties required under these regulations.

B. Employees of the provider shall, as a condition of employment:

1. Become familiar with these regulations, comply with them in all respects, and help individuals understand and assert their rights.

2. Protect individuals from any form of abuse, neglect, or exploitation (i) by not abusing, neglecting or exploiting any individual; (ii) by not permitting or condoning anyone else abusing, neglecting, or exploiting any individual; and (iii) by reporting all suspected abuse, neglect, or exploitation to the director. Protecting individuals receiving services from abuse also includes using the minimum force necessary to restrain an individual.

3. Cooperate with any investigation, meeting, hearing, or appeal held under these regulations. Cooperation includes giving statements or sworn testimony.

4. Perform any other duties required under these regulations.

C. The human rights advocate shall:

1. Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses.

2. Monitor the implementation of an advocacy system for individuals receiving services from the provider or providers to which the advocate is assigned.

3. Promote and monitor provider compliance with these and other applicable individual rights laws, regulations, and policies.

4. Investigate and try to prevent or correct, informally or formally, any alleged rights violations by interviewing, mediating, negotiating, advising, and consulting with providers and their respective governing bodies, directors, and employees.

5. Whenever necessary, file a written complaint with the LHRC for an individual or, where general conditions or practices interfere with individuals' rights, for a group of individuals.

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~~6. Investigate and examine all conditions or practices that may interfere with the free exercise of individuals' rights.~~

~~7. Help the individual or the individual's chosen representative during any meeting, hearing, appeal, or other proceeding under these regulations unless the individual or his chosen representative chooses not to involve the human rights advocate.~~

~~8. Provide orientation, training, and technical assistance to the LHRCs for which he is responsible.~~

~~9. Tell the LHRC about any recommendations made to the director, the provider, the provider's governing body, the state human rights director, or the department for changes in policies, procedures, or practices that have the potential to adversely affect the rights of individuals.~~

~~10. Make recommendations to the state human rights director concerning the employment and supervision of other advocates where appropriate.~~

~~11. Submit regular reports to the state human rights director, the LHRC, and the SHRC about provider implementation of and compliance with these regulations.~~

~~12. Provide consultation to individuals, providers and their governing bodies, directors, and employees regarding individuals' rights, providers' duties, and complaint resolution.~~

~~13. Perform any other duties required under these regulations.~~

D. The Local Human Rights Committee shall:

~~1. Consist of five or more members appointed by the SHRC.~~

~~a. Membership shall be broadly representative of professional and consumer interests. At least two members shall be individuals who are receiving or have received public or private mental health, mental retardation, or substance abuse treatment or habilitation services within five years of their initial appointment. At least one third of the members shall be consumers or family members of consumers. Remaining appointments shall include persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field.~~

~~b. At least one member shall be a health care provider.~~

~~e. No current employee of the department or a provider shall serve as a member of any LHRC that serves an oversight function for the employing facility or provider.~~

~~d. Initial appointments to an LHRC shall be staggered, with approximately one third of the members appointed for a term of three years, approximately one third for a term of two years, and the remainder for a term of one year. After that, all appointments shall be for a term of three years.~~

~~e. A person may be appointed for no more than two consecutive three year terms. A person appointed to fill a~~

~~vacancy may serve out that term and then be eligible for two additional consecutive terms.~~

~~f. Nominations for membership to LHRCs shall be submitted directly to the SHRC through the state human rights director at the department's Office of Human Rights.~~

~~2. Permit affiliations of local providers in accordance with the recommendations from the human rights advocate. SHRC approval is required for the denial of an affiliation request.~~

~~3. Receive complaints of alleged rights violations filed by or for individuals receiving services from providers with which the LHRC is affiliated and hold hearings according to the procedures set forth in Part V (12VAC35-115-150 et seq.) of this chapter.~~

~~4. Conduct investigations as requested by the SHRC.~~

~~5. Upon the request of the human rights advocate, provider, director, or an individual or individuals, or on its own initiative, an LHRC may review any existing or proposed policies, procedures, practices, or behavioral treatment plans that could jeopardize the rights of individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any human rights advocate, employee of the provider, or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these plans, policies, procedures, and practices.~~

~~6. Receive, review, and act on applications for variances to these regulations according to 12VAC35-115-220.~~

~~7. Receive, review and comment on all behavioral treatment plans involving the use of restraint or time out and seclusion, restraint, or time out policies for affiliated providers.~~

~~8. Adopt written bylaws that address procedures for conducting business, electing the chairperson, secretary, and other officers, designating standing committees, and setting the frequency of meetings.~~

~~9. Elect from its own members a chairperson to coordinate the activities of the LHRC and to preside at regular committee meetings and any hearings held pursuant to these regulations.~~

~~10. Conduct a meeting every quarter or more frequently as necessary to adhere to all time lines as set forth in these regulations.~~

~~11. Require members to recuse themselves from all cases wherein they have a financial or other conflict of interest.~~

~~12. The LHRC may delegate summary decision making authority to a subcommittee when expedited decisions are required before the next scheduled LHRC meeting to avoid seriously compromising an individual's quality of care, habilitation, or quality of life. The decision of the~~

subcommittee shall be reviewed by the full LHRC at its next meeting.

~~13. Perform any other duties required under these regulations.~~

E. The State Human Rights Committee shall:

1. Consist of nine members appointed by the board.

a. ~~Members shall be broadly representative of professional and consumer interests and of geographic areas in the Commonwealth. At least two members shall be individuals who are receiving or have received public or private mental health, mental retardation, or substance abuse treatment or habilitation services within five years of their initial appointment. At least one third of the members shall be consumers or family members of consumers. Remaining appointments shall include persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field.~~

b. ~~At least one member shall be a health care professional.~~

c. ~~No member can be an employee or board member of the department or a CSB.~~

d. ~~If there is a vacancy, interim appointments may be made for the remainder of the unexpired term.~~

e. ~~A person may be appointed for no more than two consecutive three year terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.~~

2. Elect a chairperson from its own members who shall:

a. ~~Coordinate the activities of the SHRC;~~

b. ~~Preside at regular meetings, hearings, and appeals; and~~

c. ~~Have direct access to the commissioner and the board in carrying out these duties.~~

3. ~~Upon request of the commissioner, human rights advocate, provider, director, or an individual or individuals, or on its own initiative, a SHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of individuals receiving services from any provider. In conducting this review, the SHRC may consult with any human rights advocate, employee of the director, or anyone else. After this review, the SHRC shall make recommendations to the director or commissioner concerning changes in these policies, procedures, and practices.~~

4. ~~Determine the appropriate number and geographical boundaries of LHRCs and consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under these regulations.~~

5. ~~Appoint members of LHRCs with the advice of the respective LHRC, human rights advocate, and the state human rights director.~~

6. ~~Advise the commissioner about the employment of the state human rights director and human rights advocates.~~

7. ~~Conduct at least eight regular meetings per year.~~

8. ~~Review decisions of LHRCs and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in these regulations.~~

9. ~~Provide oversight and assistance to LHRCs in the performance of their duties hereunder, including the development of guidance documents such as sample bylaws, affiliation agreements, and minutes to increase operational consistency among LHRCs.~~

10. ~~Review denials of LHRC affiliations.~~

11. ~~Notify the commissioner and the state human rights director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, human rights advocates, or LHRCs and assure the availability of the opinion or report to providers, human rights advocates, and LHRCs as appropriate. No document made available shall identify the name of individuals or employees in a particular case.~~

12. ~~Grant or deny variances according to the procedures specified in Part VI (12VAC35-115-220) of this chapter and review approved variances at least once every year.~~

13. ~~Make recommendations to the board concerning proposed revisions to these regulations.~~

14. ~~Make recommendations to the commissioner concerning revisions to any existing or proposed laws, regulations, policies, procedures, and practices to ensure the protection of individuals' rights.~~

15. ~~Review the scope and content of training programs designed by the department to promote responsible performance of the duties assigned under these regulations by providers, employees, human rights advocates, and LHRC members, and, where appropriate, make recommendations to the commissioner.~~

16. ~~Evaluate the implementation of these regulations and make any necessary and appropriate recommendations to the board, the commissioner, and the state human rights director concerning interpretation and enforcement of the regulations.~~

17. ~~Submit to the board and publish an annual report of its activities and the status of human rights in mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.~~

18. ~~Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a chairperson, vice chairperson, secretary, and other officers; appointing members of LHRCs; designating standing committees and~~

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their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

~~19. Review and approve the bylaws of LHRCs.~~

~~20. Require members to recuse themselves from all cases where they have a financial or other conflict of interest.~~

~~21. Perform any other duties required under these regulations.~~

~~F. The state human rights director shall:~~

~~1. Lead the implementation of the statewide human rights program and make ongoing recommendations to the commissioner, the SHRC, and LHRCs for continuous improvements in the program.~~

~~2. Advise the commissioner concerning the employment and retention of human rights advocates.~~

~~3. Advise providers, directors, advocates, LHRCs, the SHRC, and the commissioner concerning their responsibilities under these regulations and other applicable laws, regulations, policies, and departmental instructions that protect individuals' rights.~~

~~4. Organize, coordinate, and oversee training programs designed to promote responsible performance of the duties assigned under these regulations.~~

~~5. Periodically visit service settings to monitor the free exercise of rights enumerated in these regulations.~~

~~6. Supervise human rights advocates in the performance of their duties under these regulations.~~

~~7. Support the SHRC and LHRCs in carrying out their duties under these regulations.~~

~~8. Review LHRC decisions and recommendations for general applicability and provide suggestions for training to appropriate entities.~~

~~9. Monitor implementation of corrective action plans approved by the SHRC.~~

~~10. Perform any other duties required under these regulations.~~

~~G. The commissioner shall:~~

~~1. Employ the state human rights director after consultation with the SHRC.~~

~~2. Employ advocates following consultation with the state human rights director.~~

~~3. Provide or arrange for assistance and training necessary to carry out and enforce these regulations.~~

~~4. Cooperate with the SHRC and the state human rights director to investigate providers and correct conditions or practices that interfere with the free exercise of individuals' rights.~~

~~5. Advise and consult with the SHRC and the state human rights director concerning the appointment of members of LHRCs.~~

~~6. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious injuries; and variance applications.~~

~~7. Assure regular monitoring and enforcement of these regulations, including authorizing unannounced compliance reviews at any time.~~

~~8. Perform any other duties required under these regulations.~~

~~H. The board shall:~~

~~1. Adopt regulations that further define the rights of individuals receiving services from providers covered by these regulations.~~

~~2. Appoint members of the SHRC.~~

~~3. Review and approve the bylaws of the SHRC.~~

~~4. Perform any other duties required under these regulations.~~

12VAC35-115-260. Provider and department responsibilities.

A. Providers, through their directors, shall:

1. Designate a person or persons responsible for helping individuals exercise their rights and resolve complaints regarding services;

2. Take all steps necessary to perform duties required by, and ensure compliance with, this chapter in all services provided;

3. Post information in program locations about the existence and purpose of the human rights program;

4. Communicate information about the availability of a human rights advocate to individuals and authorized representatives, in accordance with 12VAC35-115-40 B 1 and B 2;

5. Ensure access, as needed, to the LHRC for all individuals receiving services;

6. Provide the human rights advocate unrestricted access to an individual and his services records whenever the advocate deems access is necessary to carry out rights protection, complaint resolution, and advocacy on behalf of the individual;

7. Require competency-based training of employees on this chapter upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file;

8. Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in this chapter for reporting allegations of abuse, neglect, or exploitation;

9. Submit to the human rights advocate for review and comment proposed policies, procedures, or practices that may affect individual human rights;

- 10. Ensure appointment of a designated liaison to, and appropriate staff participation with, the LHRC, as required;
- 11. Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' human rights and make sure that all employees cooperate with the human rights advocate, the LHRC, and the SHRC in carrying out their duties under this chapter;
- 12. Comply with requests by the SHRC, LHRC, or human rights advocate for information, policies, procedures, and written reports regarding compliance with this chapter;
- 13. Ensure the availability of records and employee witnesses upon the request of the LHRC or SHRC;
- 14. Submit applications for variances to this chapter only as a last resort; and
- 15. Not influence or attempt to influence the appointment of any person to an LHRC affiliated with the provider or director.

B. [~~Employees of the provider shall, as a condition of employment~~ Providers shall require their employees to]:

- 1. Become familiar with this chapter, comply with it in all respects, and help individuals understand and assert their rights;
- 2. Protect individuals from any form of abuse, neglect, or exploitation by:
 - a. Not abusing, neglecting, or exploiting any individual;
 - b. Using the minimum force necessary to restrain an individual;
 - c. Not permitting or condoning anyone else abusing, neglecting, or exploiting any individual; and
 - d. Reporting all suspected abuse, neglect, or exploitation to the director; and
- 3. Cooperate with any investigation, meeting, hearing, or appeal held under this chapter. Cooperation includes giving statements or sworn testimony.

C. Department human rights advocates shall:

- 1. Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses;
- 2. Provide training to individuals, family members, and providers on this chapter;
- 3. Investigate and try to prevent or correct any alleged rights violation by interviewing, mediating, negotiating, advising, or consulting with providers and their respective governing bodies, directors, and employees;
- 4. Provide orientation, training, and technical assistance to the LHRCs for which he is responsible; and
- 5. Investigate and examine all conditions or practices that may interfere with the free exercise of individuals' rights.

D. The department shall:

- 1. Employ the state human rights director to lead statewide implementation of the human rights program;
- 2. Determine, in consultation with the SHRC, the appropriate number and geographical boundaries of LHRCs;
- 3. Develop information, assistance, training tools, and other resources for individuals and constituents on this chapter;
- 4. Provide for regular monitoring and enforcement of this chapter, including conducting unannounced compliance reviews at any time;
- 5. Cooperate with and provide support to the SHRC and LHRCs, including:
 - a. Training SHRC and LHRC members on their responsibilities, roles, and functions under this chapter;
 - b. Providing access to topic area consultants as needed to support their fulfilling of their duties under this chapter; and
 - c. Providing necessary support for SHRC and LHRC investigations, meetings, and hearings; and
- 6. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious injuries; and variance applications.

12VAC35-115-270. State Human Rights Committee and local human rights committees responsibilities.

A. Local human rights committees shall:

- 1. Review any restriction on the rights of any individual imposed pursuant to 12VAC35-115-50 or 12VAC35-115-100 that lasts longer than seven days or is imposed [~~multiple~~ three or more] times during a 30-day period for providers within the LHRC's jurisdiction in accordance with 12VAC35-115-100 B 5;
- 2. Review next friend designations in accordance with 12VAC35-115-146 B 2;
- 3. Hold hearings according to the procedures set forth in Part V (12VAC35-115-150 et seq.) of this chapter for any individual served by a provider under the LHRC's jurisdiction;
- 4. Review behavioral treatment plans in accordance with 12VAC35-115-105;
- 5. Receive, review, and act on applications for variances to this chapter in accordance with 12VAC35-115-220;
- 6. Consist of five or more members appointed by the SHRC.
 - a. Membership shall be broadly representative of professional and consumer interests as required in § 37.2-204 of the Code of Virginia.
 - b. At least one member shall be a health care provider.

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- c. No current employee of the department or a provider shall serve as a member of any LHRC that serves an oversight function for the employing facility or provider.
 - d. Members shall recuse themselves from all cases in which they have a financial or other conflict of interest.
 - e. Initial appointments to an LHRC shall be staggered, with approximately one-third of the members appointed for terms of three years, approximately one-third for terms of two years, and the remainder for a term or terms of one year. After that, all appointments shall be for terms of three years.
 - f. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term and then be eligible for two additional consecutive terms.
 - g. Nominations for membership to LHRCs shall be submitted directly to the SHRC through the state human rights director at the department's Office of Human Rights;
7. Elect a chairperson from its own members who shall:
- a. Coordinate the activities of the LHRC; and
 - b. Preside at regular meetings and hearings held pursuant to this chapter;
8. Meet every quarter or more frequently as necessary to adhere to all timelines as set forth in this chapter; and
9. Adopt written bylaws that address procedures for conducting business; electing the chairperson, secretary, and other officers; designating standing committees; and setting the frequency of meetings.
- B. Local human rights committees may delegate authority to a subcommittee when expedited decisions are required before the next scheduled LHRC meeting to avoid seriously compromising an individual's quality of care, habilitation, or quality of life. The decision of the subcommittee shall be reviewed by the full LHRC at its next meeting.
- C. The State Human Rights Committee shall:
- 1. Perform the following responsibilities with respect to the operation of LHRCs:
 - a. Appoint LHRC members with the advice of the respective LHRC, human rights advocate, and the state human rights director;
 - b. Review and approve the bylaws of LHRCs; and
 - c. Provide oversight to and assist LHRCs in the performance of their duties under this chapter, including the development of guidance documents;
 - 2. Review LHRC decisions when required by this chapter and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in this chapter;
- 3. Notify the commissioner and the state human rights director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, human rights advocates, or LHRCs and ensure that:
 - a. Its recommendations are communicated to providers, human rights advocates, and LHRCs as appropriate; and
 - b. The communication of its recommendations does not identify the name of individuals or employees in a particular case;
 - 4. Grant or deny variances according to the procedures specified in Part VI (12VAC35-115-220) of this chapter and review approved variances at least once every year;
 - 5. Submit to the board and publish an annual report of its activities and the status of human rights in services licensed, funded, or operated by the department and make recommendations for improvement;
 - 6. Evaluate the implementation of this chapter and make necessary and appropriate recommendations to the board, the commissioner, and the state human rights director concerning its interpretation and enforcement;
 - 7. Review and make recommendations to the department and board, as appropriate, concerning:
 - a. The scope and content of training programs designed by the department to promote responsible performance of the duties assigned under this chapter;
 - b. Existing or proposed policies, procedures, or practices that could jeopardize the rights of individuals receiving services from any provider;
 - c. Proposed revisions to this chapter; and
 - d. Revisions to existing or proposed laws, regulations, policies, procedures, and practices that are needed to ensure the protection of individuals' rights;
 - 8. Consist of nine members appointed by the board.
 - a. Members shall be broadly representative of professional and consumer interests as required in § 37.2-204 of the Code of Virginia;
 - b. Members shall recuse themselves from all cases in which they have a financial or other conflict of interest;
 - c. If there is a vacancy, interim appointments may be made by the board for the remainder of the unexpired term;
 - d. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term and then be eligible for two additional consecutive terms; and
 - e. No current employee of the department, a CSB, or a behavioral health authority may serve as a member of the SHRC;
 - 9. Elect a chairperson from its own members who shall:
 - a. Coordinate the activities of the SHRC;

b. Preside at regular meetings, hearings, and appeals; and
c. Have direct access to the commissioner and the board in carrying out these duties;

10. Conduct at least eight regular meetings per year; and

11. Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a chairperson, vice chairperson, secretary, and other officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

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TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Fast-Track Regulation

Title of Regulation: **16VAC15-11. Public Participation Guidelines (amending 16VAC15-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 40.1-6 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 8, 2017.

Effective Date: February 24, 2017.

Agency Contact: Holly Raney, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email holly.raney@doli.virginia.gov.

Basis: Pursuant to § 40.1-6 of the Code of Virginia, the Commissioner of the Department of Labor and Industry is authorized to "make such rules and regulations as may be necessary for the enforcement of this title."

The amendments conform the regulation to Chapter 795 of the 2012 Acts of Assembly, which provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Purpose: The purpose of this amendment is to make the department's Public Participation Guidelines conform to those of the Administrative Process Act. Participation by the public in the regulatory process is essential to assist the department in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The amendment was recommended by the Department of Planning and Budget and is intended to merely conform the

department's Public Participation Guidelines to subsection B of § 2.2-4007.02 of the Code of Virginia. The rulemaking is not expected to be controversial and is appropriate for the fast-track rulemaking process.

Substance: The amendment adds a requirement for the department to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

Issues: Other than conformity and consistency between law and regulation, there are no primary advantages or disadvantages to the public in implementing the amended provisions since it is already in the Code of Virginia. There are no primary advantages or disadvantages for the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,¹ the Department of Labor and Industry (DOLI) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." DOLI proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, DOLI's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

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Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

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

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 amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

Agency's Response to Economic Impact Analysis: The Department of Labor and Industry has no additional comment in response to the economic impact analysis.

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

Part III

Public Participation Procedures

16VAC15-11-50. Public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.A.R. Doc. No. R17-4989; Filed December 13, 2016, 8:20 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Fast-Track Regulation

Titles of Regulations: **18VAC90-19. Regulations Governing the Practice of Nursing (adding 18VAC90-19-10 through 18VAC90-19-280).**

18VAC90-20. Regulations Governing the Practice of Nursing (repealing 18VAC90-20-10 through 18VAC90-20-460).

18VAC90-27. Regulations for Nursing Education Programs (adding 18VAC90-27-10 through 18VAC90-27-240).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 8, 2017.

Effective Date: February 24, 2017.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 authorizes the Board of Nursing to promulgate regulations to administer the regulatory system. In addition, § 54.1-3005 of the Code of Virginia authorizes the Board of Nursing to approve nursing education programs.

Purpose: The amended regulation clarifies several provisions that have caused confusion for applicants or approved education programs. To the extent the elimination of unworkable requirements for nursing education programs facilitates the approval of such programs, the proposal may enable programs to enroll nursing students and encourage hospitals to serve as clinical sites for training. Such training is essential for students who will be licensed nurses to protect the health and safety of patients and clients whom they will serve.

Rationale for Using Fast-Track Rulemaking Process: The board is using the fast-track rulemaking process because the changes being made to the regulations for nursing education programs are eliminating burdensome and problematic requirements. Therefore, the board would like to promulgate those amendments as soon as possible. The amendments to the regulations for licensure and practice of nurses are clarifying only and do not change any current requirement for nurses or clinical nurse specialists. There should be no opposition to the amendments, so a fast-track action is appropriate.

Substance: 18VAC90-20 is repealed and repromulgated into 18VAC90-19, Regulations Governing the Practice of Nursing, and 18VAC90-27, Regulations Governing Nursing Education Programs. In 18VAC90-19, requirements for licensure of nurses are not changed, but there are several amendments to clarify the national examination required for licensure and the educational qualifications for persons whose nursing education was completed in another country. Amendments to the sections on clinical nurse specialists do not change the current requirements but are consistent with legislation passed in the 2016 Session of the General Assembly.

In 18VAC90-27, amendments delete several requirements for nursing education programs that have been problematic and include the State Council of Higher Education for Virginia as the approving body for certain nursing education programs.

Issues: There are no primary advantages or disadvantages to the public; clarification of the regulations will benefit applicants for licensure, and elimination of some current requirements will benefit nursing education programs. The primary advantage to the Board of Nursing is the clarification of qualifications for licensure, which may eliminate a few of the inquiries from applicants. Likewise, the elimination of several problematic requirements for education programs will reduce the time spent in assisting programs with compliance.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a general review, the Board of Nursing (Board) proposes to repeal its comprehensive nursing regulation and replace it with two new regulations. One of the replacement regulations will govern the practice of nursing and the other will govern nursing education programs. Although most of this proposed action will only divide up the current regulation and migrate it unchanged into the two new regulations, the Board also proposes several substantive changes to regulatory requirements.

Specifically, the Board proposes to remove references to Board approval of clinical nursing specialist education programs and to add the State Council of Higher Education for Virginia (SCHEV) as an entity that may approve nursing education programs. The Board also proposes to require educational institutions to list the total clinical hours obtained in their program on student transcripts instead of having to list the number of clinic hours obtained from each course in their program. Further the Board proposes to eliminate the requirement that entities which provide clinical experience opportunities for educational programs specify the number of nursing students allowed in each nursing unit in their written agreements with educational programs. Finally, the Board proposes to remove general language that refers to passage of examinations and replace it with examination requirements that specifically reference the National Council Licensure Examination (NCLEX).

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

Estimated Economic Impact. Currently, the Board has one comprehensive regulation that covers both nursing licensure and nursing education programs. In order to make the rules for nurses easier to search, the Board now proposes to repeal this regulation and promulgate two replacement regulations that will divide up the regulatory provisions into two parts. To the extent that this action migrates regulatory requirements unchanged to one of the new regulations, no regulated entity is likely to incur costs on account of that migration. Regulated entities, as well as other interested parties, are likely to benefit from this regulatory matter being split into shorter, easier to read regulations.

In addition to dividing regulatory provisions into two separate regulations, the Board proposes several changes to actual

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regulatory requirements. Current regulation references the Board's authority to approve educational programs for clinical nurse specialists. However, Chapter 83 of the 2016 Acts of Assembly removed this authority. The Board now proposes to conform nursing regulations to this legislation by removing these regulatory references. This change will benefit regulated entities as it removes now obsolete language. No entity is likely to incur costs on account of this change.

Current regulation requires that institutions that wish to establish nursing education programs to be approved by the Virginia Department of Education. The Board proposes to add SCHEV as an entity that may also approve nursing education programs. No teaching institutions are likely to incur costs on account of this change. These institutions will likely benefit from the additional flexibility of having an additional entity that can approve programs.

Current regulation requires that entities that contract with nursing education programs¹ to provide clinical experience opportunities specify in their written agreements how many students will be allowed in each nursing unit. It also requires nursing education programs to keep student transcripts that include the number of clinical hours completed for each clinical course completed. Board staff reports that requiring written agreements to include the number of nursing students per nursing unit may discourage large hospitals with many nursing units from signing agreements with nursing education programs. Because of this, the Board now proposes to eliminate this requirement. The Board also proposes to modify transcript requirements so that nursing education programs will only have to keep records on the total number of clinical hours completed by any student because the Board does not need this information broken down by course. These changes will provide more flexibility to both nursing education programs and the clinical experience providers that contract with them.

Finally, current regulation references licensure examinations (in the plural) in several places. Board staff reports that the only examination that is acceptable for licensure in Virginia and other states is the National Council Licensure Examination (NCLEX). In order to eliminate any confusion that applicants might experience because of language that implies that there is more than one acceptable licensure exam, the Board proposes to replace this general language with specific references to the NCLEX. This change will benefit affected entities by clarifying what examination they need to pass in order to be licensed.

Businesses and Entities Affected. This proposed regulatory action will affect all nursing education programs and all applicants for nursing licensure. Board staff reports that there are 82 registered nursing (RN) and 61 licensed practical nursing (LPN) education programs in the Commonwealth and that the Board receives approximately 10,000 applications for RN and LPN licensure each year.

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

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed changes will likely not 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. No small businesses are likely to incur any additional costs on account of these proposed changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed changes.

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.

¹ These entities can include any agencies or institutions that provide skilled nursing services, like hospitals and nursing homes, where students can complete required supervised clinical experience hours.

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

Summary:

The Board of Nursing repeals Regulations Governing the Practice of Nursing (18VAC90-20) and replaces it with two regulatory chapters derived from 18VAC60-20. The Regulations Governing the Practice of Nursing (18VAC60-19) includes provisions that are applicable to the licensure and practice of nurses. The requirements for licensure of nurses are not changed, but several clarifying amendments are made to the national examination required for licensure and the educational qualifications for persons whose nursing education was completed in another country. The requirements for clinical nurse specialists are not changed but the board's authority to approve educational programs for clinical nurse specialists is

removed consistent with Chapter 83 of the 2016 Acts of Assembly. Regulations for Nursing Education Programs (18VAC60-27) includes provisions that are applicable to nursing education programs. Amendments include (i) adding the State Council of Higher Education for Virginia as an approving body for certain nursing education programs, (ii) requiring an educational institution to list the total clinical hours obtained in its program on student transcripts instead of listing the number of clinic hours obtained from each course, (iii) eliminating the requirement that an entity providing clinical experience opportunities for educational programs specify the number of nursing students allowed in each nursing unit in its written agreements with educational programs, and (iv) replacing general language to passage of an examination with a specific reference to the National Council Licensure Examination.

CHAPTER 19
REGULATIONS GOVERNING THE PRACTICE OF
NURSING

Part I
General Provisions

18VAC90-19-10. Definitions.

In addition to words and terms defined in §§ 54.1-3000 and 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Contact hour" means 50 minutes of continuing education coursework or activity.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Primary state of residence" means the state of a person's declared fixed, permanent, and principal home or domicile for legal purposes.

18VAC90-19-20. Delegation of authority.

The executive director shall be delegated the authority to issue licenses and certificates and execute all notices, orders, and official documents of the board unless the board directs otherwise.

18VAC90-19-30. Fees.

Fees required by the board are:

- | | |
|---|-------|
| <u>1. Application for licensure by examination - RN</u> | \$190 |
| <u>2. Application for licensure by endorsement - RN</u> | \$190 |
| <u>3. Application for licensure by examination - LPN</u> | \$170 |
| <u>4. Application for licensure by endorsement - LPN</u> | \$170 |
| <u>5. Reapplication for licensure by examination</u> | \$50 |
| <u>6. Biennial licensure renewal - RN</u> | \$140 |
| <u>7. Biennial inactive licensure renewal - RN</u> | \$70 |
| <u>8. Biennial licensure renewal - LPN</u> | \$120 |
| <u>9. Biennial inactive licensure renewal - LPN</u> | \$60 |
| <u>10. Late renewal - RN</u> | \$50 |
| <u>11. Late renewal - LPN</u> | \$40 |
| <u>12. Reinstatement of lapsed license - RN</u> | \$225 |
| <u>13. Reinstatement of lapsed license - LPN</u> | \$200 |
| <u>14. Reinstatement of suspended or revoked license</u> | \$300 |
| <u>15. Duplicate license</u> | \$15 |
| <u>16. Replacement wall certificate</u> | \$25 |
| <u>17. Verification of license</u> | \$35 |
| <u>18. Transcript of all or part of applicant or licensee records</u> | \$35 |
| <u>19. Returned check charge</u> | \$35 |
| <u>20. Application for CNS registration</u> | \$130 |
| <u>21. Biennial renewal of CNS registration</u> | \$80 |
| <u>22. Reinstatement of lapsed CNS registration</u> | \$125 |
| <u>23. Verification of CNS registration to another jurisdiction</u> | \$35 |
| <u>24. Late renewal of CNS registration</u> | \$35 |

18VAC90-19-40. Duplicate license.

A duplicate license for the current renewal period shall be issued by the board upon receipt of the required information and fee.

18VAC90-19-50. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct client care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name

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and the appropriate title for the license, registration, or student status under which he is practicing in that setting. Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for clients in custody of state or local law-enforcement agencies may use identification badges with first name and first letter only of last name and appropriate title.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

C. Each licensee shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted by a licensee electronically or in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address of record on file with the board.

18VAC90-19-60. Data collection of nursing workforce information.

A. With such funds as are appropriated for the purpose of data collection and consistent with the provisions of § 54.1-2506.1 of the Code of Virginia, the board shall collect workforce information biennially from a representative sample of registered nurses, licensed practical nurses, and certified nurse aides and shall make such information available to the public. Data collected shall be compiled, stored, and released in compliance with § 54.1-3012.1 of the Code of Virginia.

B. The information to be collected on nurses shall include (i) demographic data to include age, sex, and ethnicity; (ii) level of education; (iii) employment status; (iv) employment setting or settings such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or area of specialty; and (vii) number of hours worked per week in each setting. In addition, the board may determine other data to be collected as necessary.

18VAC90-19-70. Supervision of licensed practical nurses.

Licensed practical nursing shall be performed under the direction or supervision of a licensed medical practitioner, a registered nurse, or a licensed dentist.

Part II

Multistate Licensure Privilege

18VAC90-19-80. Issuance of a license with a multistate licensure privilege.

A. To be issued a license with a multistate licensure privilege by the board, a nurse currently licensed in Virginia or a person applying for licensure in Virginia shall submit a declaration stating that his primary residence is in Virginia.

Evidence of a primary state of residence may be required to include:

1. A driver's license with a home address;
2. A voter registration card displaying a home address;
3. A federal or state tax return declaring the primary state of residence;
4. A Military Form No. 2058 – state of legal residence; or
5. A W-2 from the United States government or any bureau, division, or agency thereof indicating the declared state of residence.

B. A nurse on a visa from another country applying for licensure in Virginia may declare either the country of origin or Virginia as the primary state of residence. If the foreign country is declared as the primary state of residence, a single state license shall be issued by Virginia.

C. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure application by the board for a period not to exceed 90 days.

1. If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the 90-day authorization to practice stayed until resolution of the pending investigation.
2. A license issued by a former party state shall no longer be valid upon issuance of a license by the board.
3. If the board denies licensure to an applicant from another party state, it shall notify the former home state within 10 business days, and the former home state may take action in accordance with the laws and regulations of that state.

D. A license issued by a party state is valid for practice in all other party states, unless clearly designated as valid only in the state that issued the license. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

18VAC90-19-90. Limitations of a multistate licensure privilege.

A. The board shall include in all disciplinary orders that limit practice or require monitoring the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party states.

B. An individual who had a license that was surrendered, revoked, or suspended or an application denied for cause in a prior state of primary residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by

the prior state of adverse action. Once eligible for licensure in the prior state, a multistate license may be issued.

18VAC90-19-100. Access to information in the coordinated licensure information system.

A licensee may submit a request in writing to the board to review the public data relating to the licensee maintained in the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and correct inaccurate data in the information system within 10 business days.

Part III

Licensure and Renewal; Reinstatement

18VAC90-19-110. Licensure by examination.

A. The board shall authorize the administration of the NCLEX for registered nurse licensure and practical nurse licensure.

B. A candidate shall be eligible to take the NCLEX examination (i) upon receipt by the board of the completed application, the fee, and an official transcript from the nursing education program and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.
2. Arrange for the board to receive an official transcript from the nursing education program that shows either:
 - a. That the degree or diploma has been awarded and the date of graduation or conferral; or
 - b. That all requirements for awarding the degree or diploma have been met and that specifies the date of conferral.
3. File a new application and reapplication fee if:
 - a. The examination is not taken within 12 months of the date that the board determines the applicant to be eligible; or
 - b. Eligibility is not established within 12 months of the original filing date.

D. The minimum passing standard on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of

Virginia) to determine eligibility for licensure or reexamination.

F. Practice of nursing pending receipt of examination results.

1. A graduate who has filed a completed application for licensure in Virginia and has received an authorization letter issued by the board may practice nursing in Virginia from the date of the authorization letter. The period of practice shall not exceed 90 days between the date of successful completion of the nursing education program, as documented on the applicant's transcript, and the publication of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in subdivision 1 of this subsection shall use the designation "R.N. Applicant" or "L.P.N. Applicant" on a nametag or when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following receipt of the authorization letter from the board or who have failed the examination.

G. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required board application and reapplication fee in order to establish eligibility for reexamination.

3. Applicants who have failed the examination for licensure in another United States jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

18VAC90-19-120. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another United States jurisdiction and whose license is in good standing, or is eligible for reinstatement if lapsed, shall be eligible for licensure by endorsement in Virginia provided the applicant satisfies the same requirements for registered nurse or practical nurse licensure as those seeking initial licensure in Virginia.

1. Applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours as specified in 18VAC90-27-100 may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with an active, unencumbered license in another United States jurisdiction.

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2. Applicants whose basic nursing education was received in another country shall meet the requirements of 18VAC90-19-130.

3. A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination and holds an unrestricted license in Canada.

B. An applicant for licensure by endorsement who has submitted a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia and the required application and fee and has submitted the required form to the appropriate credentialing agency for verification of licensure may practice for 30 days upon receipt of an authorization letter from the board. If an applicant has not received a Virginia license within 30 days and wishes to continue practice, he shall seek an extension of authorization to practice by submitting a request and evidence that he has requested verification of licensure.

C. If the application is not completed within one year of the initial filing date, the applicant shall submit a new application and fee.

18VAC90-19-130. Licensure of applicants from other countries.

A. With the exception of applicants from Canada who are eligible to be licensed by endorsement, applicants whose basic nursing education was received in another country shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in subsection B or C of this section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education and nursing education are comparable to those required for registered nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education and nursing education are comparable to those required for practical nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

D. An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.

1. Applicants who practice nursing as provided in this subsection shall use the designation "foreign nurse graduate" on nametags or when signing official records.

2. During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.

3. Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day period may not thereafter practice nursing until he passes the licensing examination.

E. In addition to CGFNS, the board may accept credentials from other recognized agencies that review credentials of foreign-educated nurses if such agencies have been approved by the board.

18VAC90-19-140. Provisional licensure of applicants for licensure as registered nurses.

A. Pursuant to § 54.1-3017.1 of the Code of Virginia, the board may issue a provisional license to an applicant for the purpose of meeting the 500 hours of supervised, direct, hands-on client care required of an approved registered nurse education program.

B. Such applicants for provisional licensure shall submit:

1. A completed application for licensure by examination and fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia;

2. Documentation that the applicant has successfully completed a nursing education program; and

3. Documentation of passage of the NCLEX in accordance with 18VAC90-19-110.

C. Requirements for hours of supervised clinical experience in direct client care with a provisional license.

1. To qualify for licensure as a registered nurse, direct, hands-on hours of supervised clinical experience shall include the areas of adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing. Supervised clinical hours may be obtained in employment in the role of a registered nurse or without compensation for the purpose of meeting these requirements.

2. Hours of direct, hands-on clinical experience obtained as part of the applicant's nursing education program and noted on the official transcript shall be counted towards the minimum of 500 hours and in the applicable areas of clinical practice.

3. For applicants with a current, active license as an LPN, 150 hours of credit shall be counted towards the 500-hour requirement.

4. 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that:

a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and

b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.

5. An applicant for licensure shall submit verification from a supervisor of the number of hours of direct client care and the areas in which clinical experiences in the role of a registered nurse were obtained.

D. Requirements for supervision of a provisional licensee.

1. The supervisor shall be on site and physically present in the unit where the provisional licensee is providing clinical care of clients.

2. In the supervision of provisional licensees in the clinical setting, the ratio shall not exceed two provisional licensees to one supervisor at any given time.

3. Licensed registered nurses providing supervision for a provisional licensee shall:

a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board;

b. Hold an active, unrestricted license or multistate licensure privilege and have at least two years of active clinical practice as a registered nurse prior to acting as a supervisor;

c. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the supervisee's clinical knowledge and skills;

d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients; and

e. Document on a form provided by the board the frequency and nature of the supervision of provisional licensees to verify completion of hours of clinical experience.

E. The provisional status of the licensee shall be disclosed to the client prior to treatment and shall be indicated on identification worn by the provisional licensee.

F. All provisional licenses shall expire six months from the date of issuance and may be renewed for an additional six months. Renewal of a provisional license beyond the limit of 12 months may be granted and shall be for good cause shown. A request for extension of a provisional license beyond 12 months shall be made at least 30 days prior to its expiration.

18VAC90-19-150. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. A nurse shall be required to meet the requirements for continued competency set forth in 18VAC90-19-160 to renew an active license.

C. A notice for renewal of license shall be sent by the board to the last known address of the licensee. The licensee shall complete the renewal form and submit it with the required fee.

D. Failure to receive the renewal form shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the expiration date.

F. Any person practicing nursing during the time a license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

G. Upon renewal, all licensees shall declare their primary state of residence. If the declared state of residence is another compact state, the licensee is not eligible for renewal.

18VAC90-19-160. Continued competency requirements for renewal of an active license.

A. To renew an active nursing license, a licensee shall complete at least one of the following learning activities or courses:

1. Current specialty certification by a national certifying organization, as defined in 18VAC90-19-10;

2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally accredited college or university;

3. A board-approved refresher course in nursing;

4. Completion of nursing-related, evidence-based practice project or research study;

5. Completion of publication as the author or co-author during a renewal cycle;

6. Teaching or developing a nursing-related course resulting in no less than three semester hours of college credit, a 15-week course, or specialty certification;

7. Teaching or developing nursing-related continuing education courses for up to 30 contact hours;

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8. Fifteen contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or

9. Thirty contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing.

B. To meet requirements of subdivision A 8 or A 9 of this section, workshops, seminars, conferences, or courses shall be offered by a provider recognized or approved by one of the following:

1. American Nurses Credentialing Center American Nurses Association;

2. National Council of State Boards of Nursing;

3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of the National AHEC Organization;

4. Any state nurses association;

5. National League for Nursing;

6. National Association for Practical Nurse Education and Service;

7. National Federation of Licensed Practical Nurses;

8. A licensed health care facility, agency, or hospital;

9. A health care provider association;

10. Regionally or nationally accredited colleges or universities;

11. A state or federal government agency;

12. The American Heart Association, the American Health and Safety Institute, or the American Red Cross for courses in advanced resuscitation; or

13. The Virginia Board of Nursing or any state board of nursing.

C. Dual licensed persons.

1. Those persons dually licensed by this board as a registered nurse and a licensed practical nurse shall only meet one of the continued competency requirements as set forth in subsection A of this section.

2. Registered nurses who also hold an active license as a nurse practitioner shall only meet the requirements of 18VAC90-30-105 and, for those with prescriptive authority, 18VAC90-40-55.

D. A licensee is exempt from the continued competency requirement for the first renewal following initial licensure by examination or endorsement.

E. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee 60 days prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

F. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary

disability, mandatory military service, or officially declared disasters.

G. Continued competency activities or courses required by board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal.

18VAC90-19-170. Documenting compliance with continued competency requirements.

A. All licensees are required to maintain original documentation of completion for a period of two years following renewal and to provide such documentation within 30 days of a request from the board for proof of compliance.

B. Documentation of compliance shall be as follows:

1. Evidence of national certification shall include a copy of a certificate that includes name of licensee, name of certifying body, date of certification, and date of certification expiration. Certification shall be initially attained during the licensure period, have been in effect during the entire licensure period, or have been recertified during the licensure period.

2. Evidence of post-licensure academic education shall include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade, and number of credit hours received.

3. Evidence of completion of a board-approved refresher course shall include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course.

4. Evidence of completion of a nursing research study or project shall include an abstract or summary, the name of the licensee, role of the licensee as principal or coprincipal investigator, date of completion, statement of the problem, research or project objectives, methods used, and summary of findings.

5. Evidence of authoring or co-authoring a published nursing-related article, paper, book, or book chapter shall include a copy of the publication that includes the name of the licensee and publication date.

6. Evidence of teaching a course for college credit shall include documentation of the course offering, indicating instructor, course title, course syllabus, and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competency requirement unless the course offering and syllabus has changed.

7. Evidence of teaching a course for continuing education credit shall include a written attestation from the director of the program or authorizing entity including the date or dates of the course or courses and the number of contact hours awarded. If the total number of contact hours totals less than 30, the licensee shall obtain additional hours in continuing learning activities or courses.

8. Evidence of contact hours of continuing learning activities or courses shall include the name of the licensee, title of educational activity, name of the provider, number of contact hours, and date of activity.

9. Evidence of 640 hours of active practice in nursing shall include documentation satisfactory to the board of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer, and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.

18VAC90-19-180. Inactive licensure.

A. A registered nurse or licensed practical nurse who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to practice nursing in Virginia or practice on a multistate licensure privilege but may use the title "registered nurse" or "licensed practical nurse."

B. Reactivation of an inactive license.

1. A nurse whose license is inactive may reactivate within one renewal period by:

- a. Payment of the difference between the inactive renewal and the active renewal fee; and
- b. Providing attestation of completion of at least one of the learning activities or courses specified in 18VAC90-19-160 during the two years immediately preceding reactivation.

2. A nurse whose license has been inactive for more than one renewal period may reactivate by:

- a. Submitting an application;
- b. Paying the difference between the inactive renewal and the active renewal fee; and
- c. Providing evidence of completion of at least one of the learning activities or courses specified in 18VAC90-19-160 during the two years immediately preceding application for reactivation.

3. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was inactive.

4. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

5. The board may deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-3007 of the Code of Virginia or any provision of this chapter.

18VAC90-19-190. Reinstatement of lapsed licenses or license suspended or revoked.

A. A nurse whose license has lapsed may be reinstated within one renewal period by:

1. Payment of the current renewal fee and the late renewal fee; and
2. Providing attestation of completion of at least one of the learning activities or courses specified in 18VAC90-19-160 during the two years immediately preceding reinstatement.

B. A nurse whose license has lapsed for more than one renewal period shall:

1. File a reinstatement application and pay the reinstatement fee;
2. Provide evidence of completing at least one of the learning activities or courses specified in 18VAC90-19-160 during the two years immediately preceding application for reinstatement; and
3. Submit a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

C. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was lapsed.

D. A nurse whose license has been suspended or revoked by the board may apply for reinstatement by filing a reinstatement application, fulfilling requirements for continuing competency as required in subsection B of this section, and paying the fee for reinstatement after suspension or revocation. A nurse whose license has been revoked may not apply for reinstatement sooner than three years from entry of the order of revocation.

E. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

18VAC90-19-200. Restricted volunteer license and registration for voluntary practice by out-of-state licensees.

A. A registered or practical nurse may be issued a restricted volunteer license and may practice in accordance with provisions of § 54.1-3011.01 of the Code of Virginia.

B. Any licensed nurse who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

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2. Provide evidence of current, unrestricted licensure in a United States jurisdiction;
3. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide an attestation from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 11 of § 54.1-3001 of the Code of Virginia.

Part IV

Clinical Nurse Specialists

18VAC90-19-210. Clinical nurse specialist registration.

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of current specialty certification as required by § 54.1-3018.1 of the Code of Virginia or has an exception available from March 1, 1990, to July 1, 1990; and
3. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed. If registered as a clinical nurse specialist with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.
2. The clinical nurse specialist shall complete the renewal form and submit it with the required fee. An attestation of current specialty certification is required unless registered in accordance with an exception.
3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed or the multistate licensure privilege is lapsed and may be reinstated upon:
 - a. Reinstatement of RN license or multistate licensure privilege;
 - b. Payment of reinstatement and current renewal fees; and
 - c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

18VAC90-19-220. Clinical nurse specialist practice.

A. The practice of a clinical nurse specialist shall be consistent with the education and experience required for clinical nurse specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for the designated specialty and in accordance with the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include performance as an expert clinician to:

1. Provide direct care and counsel to individuals and groups;
2. Plan, evaluate, and direct care given by others; and
3. Improve care by consultation, collaboration, teaching, and the conduct of research.

Part V

Disciplinary and Delegation Provisions

18VAC90-19-230. Disciplinary provisions.

A. The board has the authority to deny, revoke, or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in procuring or maintaining a license means, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial license, reinstatement, or renewal of a license; or
 - c. Giving or receiving assistance in the taking of the licensing examination.
2. Unprofessional conduct means, but shall not be limited to:
 - a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;
 - d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
 - e. Falsifying or otherwise altering patient, employer, student, or educational program records, including falsely representing facts on a job application or other employment-related documents;

- f. Abusing, neglecting, or abandoning patients or clients;
- g. Practice of a clinical nurse specialist beyond that defined in 18VAC90-19-220 and § 54.1-3000 of the Code of Virginia;
- h. Representing oneself as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board;
- i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part VI (18VAC90-19-240 et seq.) of this chapter;
- j. Giving to or accepting from a patient or client property or money for any reason other than fee for service or a nominal token of appreciation;
- k. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;
- l. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the nurse uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include actions that result in personal gain at the expense of the patient or client, or a nontherapeutic personal involvement or sexual conduct with a patient or client;
- m. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 the Code of Virginia;
- n. Providing false information to staff or board members in the course of an investigation or proceeding;
- o. Failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; or
- p. Violating any provision of this chapter.

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

Part VI

Delegation of Nursing Tasks and Procedures

18VAC90-19-240. Definitions for delegation of nursing tasks and procedures.

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

"Delegation" means the authorization by a registered nurse to an unlicensed person to perform selected nursing tasks and procedures in accordance with this part.

"Supervision" means guidance or direction of a delegated nursing task or procedure by a qualified, registered nurse who provides periodic observation and evaluation of the performance of the task and who is accessible to the unlicensed person.

"Unlicensed person" means an appropriately trained individual, regardless of title, who receives compensation, who functions in a complementary or assistive role to the registered nurse in providing direct patient care or carrying out common nursing tasks and procedures, and who is responsible and accountable for the performance of such tasks and procedures. With the exception of certified nurse aides, this shall not include anyone licensed or certified by a health regulatory board who is practicing within his recognized scope of practice.

18VAC90-19-250. Criteria for delegation.

A. Delegation of nursing tasks and procedures shall only occur in accordance with the plan for delegation adopted by the entity responsible for client care. The delegation plan shall comply with provisions of this chapter and shall provide:

1. An assessment of the client population to be served;
2. Analysis and identification of nursing care needs and priorities;
3. Establishment of organizational standards to provide for sufficient supervision that assures safe nursing care to meet the needs of the clients in their specific settings;
4. Communication of the delegation plan to the staff;
5. Identification of the educational and training requirements for unlicensed persons and documentation of their competencies; and
6. Provision of resources for appropriate delegation in accordance with this part.

B. Delegation shall be made only if all of the following criteria are met:

1. In the judgment of the delegating nurse, the task or procedure can be properly and safely performed by the unlicensed person and the delegation does not jeopardize the health, safety, and welfare of the client.
2. The delegating nurse retains responsibility and accountability for nursing care of the client, including nursing assessment, planning, evaluation, documentation, and supervision.
3. Delegated tasks and procedures are within the knowledge, area of responsibility, and skills of the delegating nurse.
4. Delegated tasks and procedures are communicated on a client-specific basis to an unlicensed person with clear, specific instructions for performance of activities, potential complications, and expected results.
5. The person to whom a nursing task has been delegated is clearly identified to the client as an unlicensed person by a name tag worn while giving client care and by personal communication by the delegating nurse when necessary.

C. Delegated tasks and procedures shall not be reassigned by unlicensed personnel.

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D. Nursing tasks shall only be delegated after an assessment is performed according to the provisions of 18VAC90-19-260.

18VAC90-19-260. Assessment required prior to delegation.

Prior to delegation of nursing tasks and procedures, the delegating nurse shall make an assessment of the client and unlicensed person as follows:

1. The delegating nurse shall assess the clinical status and stability of the client's condition; determine the type, complexity, and frequency of the nursing care needed; and delegate only those tasks that:

- a. Do not require the exercise of independent nursing judgment;
- b. Do not require complex observations or critical decisions with respect to the nursing task or procedure;
- c. Frequently recur in the routine care of the client or group of clients;
- d. Do not require repeated performance of nursing assessments;
- e. Utilize a standard procedure in which the tasks or procedures can be performed according to exact, unchanging directions; and
- f. Have predictable results and for which the consequences of performing the task or procedures improperly are minimal and not life threatening.

2. The delegating nurse shall also assess the training, skills, and experience of the unlicensed person and shall verify the competency of the unlicensed person to determine which tasks are appropriate for that unlicensed person and the method of supervision required.

18VAC90-19-270. Supervision of delegated tasks.

A. The delegating nurse shall determine the method and frequency of supervision based on factors that include:

1. The stability and condition of the client;
2. The experience and competency of the unlicensed person;
3. The nature of the tasks or procedures being delegated; and
4. The proximity and availability of the registered nurse to the unlicensed person when the nursing tasks will be performed.

B. In the event that the delegating nurse is not available, the delegation shall either be terminated or delegation authority shall be transferred by the delegating nurse to another registered nurse who shall supervise all nursing tasks delegated to the unlicensed person, provided the registered nurse meets the requirements of 18VAC90-19-250 B 3.

C. Supervision shall include:

1. Monitoring the performance of delegated tasks;

2. Evaluating the outcome for the client;
3. Ensuring appropriate documentation; and
4. Being accessible for consultation and intervention.

D. Based on an ongoing assessment as described in 18VAC90-19-260, the delegating nurse may determine that delegation of some or all of the tasks and procedures is no longer appropriate.

18VAC90-19-280. Nursing tasks that shall not be delegated.

A. Nursing tasks that shall not be delegated are those that are inappropriate for a specific, unlicensed person to perform on a specific patient after an assessment is conducted as provided in 18VAC90-19-260.

B. Nursing tasks that shall not be delegated to any unlicensed person are:

1. Activities involving nursing assessment, problem identification, and outcome evaluation that require independent nursing judgment;
2. Counseling or teaching except for activities related to promoting independence in personal care and daily living;
3. Coordination and management of care involving collaboration, consultation, and referral;
4. Emergency and nonemergency triage;
5. Administration of medications except as specifically permitted by the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia); and
6. Circulating duties in an operating room.

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 (18VAC90-19)

Licensure by examination:

[Instructions and Application for Licensure by Examination for Registered Nurses \(rev. 8/2011\)](#)

[Instructions and Application for Licensure by Examination - Licensed Practical Nurse \(rev. 8/2011\)](#)

[Instructions and Application for Licensure by Repeat Examination for Registered Nurse \(rev.12/2014\)](#)

[Instructions and Application for Licensure by Repeat Examination for Licensed Practical Nurse \(rev.12/2014\)](#)

Licensure by endorsement:

[Application for Licensure by Endorsement -- Registered Nurse \(rev. 5/2011\)](#)

[Instructions for Licensure by Endorsement -- Registered Nurse \(rev. 5/2011\)](#)

[Instructions for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 5/2011\)](#)

[Application for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 6/2011\)](#)

[Verification of Clinical Practice -- Licensure by Endorsement \(rev. 1/2010\)](#)

Reinstatement:

[Instructions and Application for Reinstatement -- Registered Nurse or Licensed Practical Nurse \(rev. 10/2016\)](#)

[Instructions and Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation \(rev. 6/2011\)](#)

[Instructions and Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation \(rev. 6/2011\)](#)

Clinical nurse specialist:

[Procedure \(rev. 3/10\) and Application for Registration as a Clinical Nurse Specialist \(rev. 6/2011\)](#)

[Instructions and Application for Reinstatement of Registration as a Clinical Nurse Specialist \(rev. 3/2014\)](#)

Other:

[Declaration of Primary State of Residency for Purposes of the Nurse Licensure Compact \(rev. 7/2015\)](#)

[License Verification Form \(rev. 7/2016\)](#)

[Application for Registration for Volunteer Practice \(undated, filed 12/2016\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/2008\)](#)

[Verification of Supervised Clinical Practice -- Registered Nurse Provisional License \(eff. 8/013\)](#)

[Notification of Intent to Supervise Clinical Practice -- Registered Nurse Provisional License \(rev. 4/2015\)](#)

[Instructions and Application for Restricted Volunteer Nursing License \(rev. 5/2016\)](#)

[Request to Change License Status: Inactive to Active for RN and LPN \(rev. 8/2016\)](#)

CHAPTER 27 REGULATIONS FOR NURSING EDUCATION PROGRAMS

Part I General Provisions

18VAC90-27-10. Definitions.

In addition to words and terms defined in § 54.1-3000 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, or a national nursing accrediting organization recognized by the board.

"Advisory committee" means a group of persons from a nursing education program and the health care community who meets regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Baccalaureate degree nursing program" or "prelicensure graduate degree program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Board" means the Board of Nursing.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status that results when an approved nursing education program has failed to maintain requirements as set forth in this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide clinical or observational experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma, or certificate.

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"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia Department of Education or by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed nurse who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting, providing clinical supervision.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved or maintain approval.

"SCHEV" means the State Council of Higher Education for Virginia.

"Site visit" means a focused onsite review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive onsite review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-27-20. Fees.

Fees required by the board are:

- | | |
|--|----------------|
| <u>1. Application for approval of a nursing education program.</u> | <u>\$1,650</u> |
| <u>2. Survey visit for nursing education program.</u> | <u>\$2,200</u> |
| <u>3. Site visit for NCLEX passage rate for nursing education program.</u> | <u>\$1,500</u> |

Part II

Initial Approval of a Nursing Education Program

18VAC90-27-30. Application for initial approval.

An institution wishing to establish a nursing education program shall:

1. Provide documentation of attendance by the program director at a board orientation on establishment of a nursing education program prior to submission of an application and fee.

2. Submit to the board an application to establish a nursing education program along with a nonrefundable application fee as prescribed in 18VAC90-27-20.

a. The application shall be effective for 12 months from the date the application was received by the board.

b. If the program does not meet the board's requirements for approval within 12 months, the institution shall file a new application and fee.

3. Submit the following information on the organization and operation of a nursing education program:

a. A copy of a business license and zoning permit to operate a school in a Virginia location, a certificate of operation from the State Corporation Commission, evidence of approval from the Virginia Department of Education or SCHEV, and documentation of accreditation, if applicable;

b. The organizational structure of the institution and its relationship to the nursing education program therein;

c. The type of nursing program, as defined in 18VAC90-27-10;

d. An enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval including (i) the planned number of students in the first class and in all subsequent classes and (ii) the planned frequency of admissions. Any increase in admissions that is not stated in the enrollment plan must be approved by the board. Also, transfer students are not authorized until full approval has been granted to the nursing education program; and

e. A tentative time schedule for planning and initiating the program through graduation of the first class and the program's receipt of results of the NCLEX examination.

4. Submit to the board evidence documenting adequate resources for the projected number of students and the ability to provide a program that can meet the requirements of this part to include the following information:

a. The results of a community assessment or market analysis that demonstrates the need for the nursing education program in the geographic area for the proposed school. The assessment or analysis shall include employment opportunities of nurses in the community, the number of clinical facilities or employers available for the size of the community to support the

number of graduates, and the number and types of other nursing education programs in the area;

b. A projection of the availability of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;

c. Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision;

d. Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program, the number of students, and clinical hours permitted at each clinical site and on each nursing unit;

e. Documentation that at least 80% of all clinical experiences are to be conducted in Virginia, unless an exception is granted by the board. There shall be documentation of written approval for any clinical experience conducted outside of Virginia by the agency that has authority to approve clinical placement of students in that state. The use of any clinical site in Virginia located 50 miles or more from the school shall require board approval;

f. A diagram or blueprint showing the availability of academic facilities for the program, including classrooms, skills laboratory, and learning resource center. This information shall include the number of restrooms for the student and faculty population, classroom and skills laboratory space large enough to accommodate the number of the student body, and sufficient faculty office space; and

g. Evidence of financial resources for the planning, implementation, and continuation of the program with line-item budget projections for the first three years of operations beginning with the admission of students.

5. Respond to the board's request for additional information within a timeframe established by the board.

18VAC90-27-40. Organization and administration.

A. The governing or parent institution offering Virginia nursing education programs shall be approved by the Virginia Department of Education or SCHEV or accredited by an accrediting agency recognized by the U.S. Department of Education.

B. Any agency or institution used for clinical experience by a nursing education program shall be in good standing with its licensing body.

C. The program director of the nursing education program shall:

1. Hold a current license or multistate licensure privilege to practice as a registered nurse in the Commonwealth

without any disciplinary action that currently restricts practice;

2. Have additional education and experience necessary to administer, plan, implement, and evaluate the nursing education program;

3. Ensure that faculty are qualified by education and experience to teach in the program or to supervise the clinical practice of students in the program;

4. Maintain a current faculty roster, a current clinical agency form, and current clinical contracts available for board review and subject to an audit; and

5. Only serve as program director at one location or campus.

D. The program shall provide evidence that the director has authority to:

1. Implement the program and curriculum;

2. Oversee the admission, academic progression, and graduation of students;

3. Hire and evaluate faculty; and

4. Recommend and administer the program budget, consistent with established policies of the controlling agency.

E. An organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body, to other departments within the controlling institution, to the cooperating agencies, and to the advisory committee for the nursing education program.

F. There shall be evidence of financial support and resources sufficient to meet the goals of the nursing education program as evidenced by a copy of the current annual budget or a signed statement from administration specifically detailing its financial support and resources.

18VAC90-27-50. Philosophy and objectives.

Written statements of philosophy and objectives shall be the foundation of the curriculum and shall be:

1. Formulated and accepted by the faculty and the program director;

2. Descriptive of the practitioner to be prepared; and

3. The basis for planning, implementing, and evaluating the total program through the implementation of a systematic plan of evaluation that is documented in faculty or committee meeting minutes.

18VAC90-27-60. Faculty.

A. Qualifications for all faculty.

1. Every member of the nursing faculty, including the program director, shall (i) hold a current license or a multistate licensure privilege to practice nursing in Virginia as a registered nurse without any disciplinary action that currently restricts practice and (ii) have had at least two years of direct client care experience as a registered nurse prior to employment by the program.

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Persons providing instruction in topics other than nursing shall not be required to hold a license as a registered nurse.

2. Every member of a nursing faculty supervising the clinical practice of students shall meet the licensure requirements of the jurisdiction in which that practice occurs. Faculty shall provide evidence of education or experience in the specialty area in which they supervise student clinical experience for quality and safety. Prior to supervision of students, the faculty providing supervision shall have completed a clinical orientation to the site in which supervision is being provided.

3. The program director and each member of the nursing faculty shall maintain documentation of professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects, and professional writing. Documentation of annual professional development shall be maintained in employee files for the director and each faculty member until the next survey visit and shall be available for board review.

4. For baccalaureate degree and prelicensure graduate degree programs:

a. The program director shall hold a doctoral degree with a graduate degree in nursing.

b. Every member of the nursing faculty shall hold a graduate degree; the majority of the faculty shall have a graduate degree in nursing. Faculty members with a graduate degree with a major other than in nursing shall have a baccalaureate degree with a major in nursing.

5. For associate degree and diploma programs:

a. The program director shall hold a graduate degree with a major in nursing.

b. The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.

c. All members of the nursing faculty shall hold a baccalaureate or graduate degree with a major in nursing.

6. For practical nursing programs:

a. The program director shall hold a baccalaureate degree with a major in nursing.

b. The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

B. Number of faculty.

1. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and to ensure safety for clients to whom students provide care.

2. When students are giving direct care to clients, the ratio of students to faculty shall not exceed 10 students to one faculty member, and the faculty shall be on site solely to supervise students.

3. When preceptors are utilized for specified learning experiences in clinical settings, the faculty member may supervise up to 15 students.

C. Functions. The principal functions of the faculty shall be to:

1. Develop, implement, and evaluate the philosophy and objectives of the nursing education program;

2. Design, implement, teach, evaluate, and revise the curriculum. Faculty shall provide evidence of education and experience necessary to indicate that they are competent to teach a given course;

3. Develop and evaluate student admission, progression, retention, and graduation policies within the framework of the controlling institution;

4. Participate in academic advisement and counseling of students in accordance with requirements of the Financial Educational Rights and Privacy Act (20 USC § 1232g);

5. Provide opportunities for and evidence of student and graduate evaluation of curriculum and teaching and program effectiveness; and

6. Document actions taken in faculty and committee meetings using a systematic plan of evaluation for total program review.

18VAC90-27-70. Admission of students.

A. Requirements for admission to a registered nursing education program shall not be less than the requirements of § 54.1-3017 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination. The equivalent of a four-year high school course of study as required pursuant to § 54.1-3017 shall be considered to be:

1. A General Educational Development (GED) certificate for high school equivalence; or

2. Satisfactory completion of the college courses required by the nursing education program.

B. Requirements for admission to a practical nursing education program shall not be less than the requirements of § 54.1-3020 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination.

C. Requirements for admission, readmission, advanced standing, progression, retention, dismissal, and graduation shall be available to the students in written form.

D. Except for high school students, all applicants to a nursing education program shall be required to submit to a criminal background check prior to admission.

E. Transfer students may not be admitted until a nursing education program has received full approval from the board.

18VAC90-27-80. Resources, facilities, publications, and services.

A. Classrooms, conference rooms, laboratories, clinical facilities, and offices shall be sufficient to meet the objectives of the nursing education program and the needs of the students, faculty, administration, and staff and shall include private areas for faculty-student conferences. The nursing education program shall provide facilities that meet federal and state requirements, including:

1. Comfortable temperatures;
2. Clean and safe conditions;
3. Adequate lighting;
4. Adequate space to accommodate all students; and
5. Instructional technology and equipment needed for simulating client care.

B. The program shall have learning resources and technology that are current, pertinent, and accessible to students and faculty and sufficient to meet the needs of the students and faculty.

C. Current information about the nursing education program shall be published and distributed to applicants for admission and shall be made available to the board. Such information shall include:

1. Description of the program to include whether the program is accredited by a nursing education accrediting body;
2. Philosophy and objectives of the controlling institution and of the nursing program;
3. Admission and graduation requirements, including the policy on the use of a final comprehensive exam;
4. Fees and expenses;
5. Availability of financial aid;
6. Tuition refund policy;
7. Education facilities;
8. Availability of student activities and services;
9. Curriculum plan, to include course progression from admission to graduation, the name of each course, theory hours, skills lab hours, simulation hours (if used in lieu of direct client care hours), and clinical hours;
10. Course descriptions, to include a complete overview of what is taught in each course;
11. Faculty-staff roster;
12. School calendar;
13. Student grievance policy; and
14. Information about implications of criminal convictions.

D. Administrative support services shall be provided.

E. There shall be written agreements with cooperating agencies that:

1. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences, to include the dismissal of students from the clinical site if client safety is or may be compromised by the acts of the student;
2. Provide that faculty members or preceptors are present in the clinical setting when students are providing direct client care;
3. Provide for cooperative planning with designated agency personnel to ensure safe client care; and
4. Provide that faculty be readily available to students and preceptors while students are involved in preceptorship experiences.

F. Cooperating agencies shall be approved by the appropriate accreditation, evaluation, or licensing bodies, if such exist.

18VAC90-27-90. Curriculum.

A. Both classroom and online curricula shall reflect the philosophy and objectives of the nursing education program and shall be consistent with the law governing the practice of nursing.

B. Nursing education programs preparing for licensure as a registered or practical nurse shall include:

1. Evidence-based didactic content and supervised clinical experience in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle and in a variety of acute, nonacute, community-based, and long-term care clinical settings and experiences to include adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing;
2. Concepts of the nursing process that include conducting a focused nursing assessment of the client status that includes decision making about who and when to inform, identifying client needs, planning for episodic nursing care, implementing appropriate aspects of client care, contributing to data collection and the evaluation of client outcomes, and the appropriate reporting and documentation of collected data and care rendered;
3. Concepts of anatomy, physiology, chemistry, microbiology, and the behavioral sciences;
4. Concepts of communication, growth and development, nurse-client interpersonal relations, and client education, including:
 - a. Development of professional socialization that includes working in interdisciplinary teams; and
 - b. Conflict resolution;

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5. Concepts of ethics and the vocational and legal aspects of nursing, including:

- a. Regulations and sections of the Code of Virginia related to nursing;
- b. Client rights, privacy, and confidentiality;
- c. Prevention of client abuse, neglect, and abandonment throughout the life cycle, including instruction in the recognition, intervention, and reporting by the nurse of evidence of child or elder abuse;
- d. Professional responsibility, to include the role of the practical and professional nurse;
- e. Professional boundaries, to include appropriate use of social media and electronic technology; and
- f. History and trends in nursing and health care;

6. Concepts of pharmacology, dosage calculation, medication administration, nutrition, and diet therapy;

7. Concepts of client-centered care, including:

- a. Respect for cultural differences, values, and preferences;
- b. Promotion of healthy life styles for clients and populations;
- c. Promotion of a safe client environment;
- d. Prevention and appropriate response to situations of bioterrorism, natural and man-made disasters, and intimate partner and family violence;
- e. Use of critical thinking and clinical judgment in the implementation of safe client care; and
- f. Care of clients with multiple, chronic conditions; and

8. Development of management and supervisory skills, including:

- a. The use of technology in medication administration and documentation of client care;
- b. Participation in quality improvement processes and systems to measure client outcomes and identify hazards and errors; and
- c. Supervision of certified nurse aides, registered medication aides, and unlicensed assistive personnel.

C. In addition to meeting curriculum requirements set forth in subsection B of this section, registered nursing education programs preparing for registered nurse licensure shall also include:

1. Evidence-based didactic content and supervised clinical experiences in conducting a comprehensive nursing assessment that includes:

- a. Extensive data collection, both initial and ongoing, for individuals, families, groups, and communities addressing anticipated changes in client conditions as well as emerging changes in a client's health status;
- b. Recognition of alterations to previous client conditions;

c. Synthesizing the biological, psychological, and social aspects of the client's condition;

d. Evaluation of the effectiveness and impact of nursing care;

e. Planning for nursing interventions and evaluating the need for different interventions for individuals, groups, and communities;

f. Evaluation and implementation of the need to communicate and consult with other health team members; and

g. Use of a broad and complete analysis to make independent decisions and nursing diagnoses; and

2. Evidence-based didactic content and supervised experiences in:

a. Development of clinical judgment;

b. Development of leadership skills and unit management;

c. Knowledge of the rules and principles for delegation of nursing tasks to unlicensed persons;

d. Supervision of licensed practical nurses;

e. Involvement of clients in decision making and a plan of care; and

f. Concepts of pathophysiology.

18VAC90-27-100. Curriculum for direct client care.

A. A nursing education program preparing a student for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty. A nursing education program preparing a student for licensure as a practical nurse shall provide a minimum of 400 hours of direct client care supervised by qualified faculty. Direct client care hours shall include experiences and settings as set forth in 18VAC90-27-90 B 1.

B. Licensed practical nurses transitioning into prelicensure registered nursing programs may be awarded no more than 150 clinical hours of the 400 clinical hours received in a practical nursing program. In a practical nursing to registered nursing transitional program, the remainder of the clinical hours shall include registered nursing clinical experience across the life cycle in adult medical/surgical nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, and pediatric nursing.

C. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives. Observational experiences shall not be accepted toward the 400 or 500 minimum clinical hours required. Observational objectives shall be available to students, the clinical unit, and the board.

D. Simulation for direct client clinical hours.

1. No more than 25% of direct client contact hours may be simulation. For prelicensure registered nursing programs, the total of simulated client care hours cannot exceed 125

hours (25% of the required 500 hours). For prelicensure practical nursing programs, the total of simulated client care hours cannot exceed 100 hours (25% of the required 400 hours).

2. No more than 50% of the total clinical hours for any course may be used as simulation.

3. Skills acquisition and task training alone, as in the traditional use of a skills laboratory, do not qualify as simulated client care and therefore do not meet the requirements for direct client care hours.

4. Clinical simulation must be led by faculty who meet the qualifications specified in 18VAC90-27-60.

5. Documentation of the following shall be available for all simulated experiences:

a. Course description and objectives;

b. Type of simulation and location of simulated experience;

c. Number of simulated hours;

d. Faculty qualifications; and

e. Methods of debriefing.

18VAC90-27-110. Clinical practice of students.

A. In accordance with § 54.1-3001 of the Code of Virginia, a nursing student, while enrolled in an approved nursing program, may perform tasks that would constitute the practice of nursing. The student shall be responsible and accountable for the safe performance of those direct client care tasks to which he has been assigned.

B. Faculty shall be responsible for ensuring that students perform only skills or services in direct client care for which they have received instruction and have been found proficient by the instructor. Skills checklists shall be maintained for each student.

C. Faculty members or preceptors providing onsite supervision in the clinical care of clients shall be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the student's clinical knowledge and skills. Supervisors shall also monitor clinical performance and intervene if necessary for the safety and protection of the clients.

D. Clinical preceptors may be used to augment the faculty and enhance the clinical learning experience. Faculty shall be responsible for the designation of a preceptor for each student and shall communicate such assignment with the preceptor. A preceptor may not further delegate the duties of the preceptorship.

E. Preceptors shall provide to the nursing education program evidence of competence to supervise student clinical experience for quality and safety in each specialty area where they supervise students. The clinical preceptor shall be licensed as a nurse at or above the level for which the student is preparing.

F. Supervision of students.

1. When faculty are supervising direct client care by students, the ratio of students to faculty shall not exceed 10 students to one faculty member. The faculty member shall be on site in the clinical setting solely to supervise students.

2. When preceptors are utilized for specified learning experiences in clinical settings, the faculty member may supervise up to 15 students. In utilizing preceptors to supervise students in the clinical setting, the ratio shall not exceed two students to one preceptor at any given time. During the period in which students are in the clinical setting with a preceptor, the faculty member shall be available for communication and consultation with the preceptor.

G. Prior to beginning any preceptorship, the following shall be required:

1. Written objectives, methodology, and evaluation procedures for a specified period of time to include the dates of each experience;

2. An orientation program for faculty, preceptors, and students;

3. A skills checklist detailing the performance of skills for which the student has had faculty-supervised clinical and didactic preparation; and

4. The overall coordination by faculty who assume ultimate responsibility for implementation, periodic monitoring, and evaluation.

18VAC90-27-120. Granting of initial program approval.

A. Initial approval may be granted when all documentation required in 18VAC90-27-30 has been submitted and is deemed satisfactory to the board and when the following conditions are met:

1. There is evidence that the requirements for organization and administration and the philosophy and objectives of the program, as set forth in 18VAC90-27-40 and 18VAC90-27-50, have been met;

2. A program director who meets board requirements has been appointed, and there are sufficient faculty to initiate the program as required in 18VAC90-27-60;

3. A written curriculum plan developed in accordance with 18VAC90-27-90 has been submitted and approved by the board;

4. A written systematic plan of evaluation has been developed and approved by the board; and

5. The program is in compliance with requirements of 18VAC90-27-80 for resources, facilities, publications, and services as verified by a satisfactory site visit conducted by a representative of the board.

B. If initial approval is granted:

1. The advertisement of the nursing program is authorized.

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2. The admission of students is authorized, except that transfer students are not authorized to be admitted until the program has received full program approval.

3. The program director shall submit quarterly progress reports to the board that shall include evidence of progress toward full program approval and other information as required by the board.

18VAC90-27-130. Denying or withdrawing initial program approval.

A. Denial of initial program approval.

1. Initial approval may be denied for causes enumerated in 18VAC90-27-140.

2. If initial approval is denied:

a. The program shall be given an option of correcting the deficiencies cited by the board during the time remaining in its initial 12-month period following receipt of the application.

b. No further action regarding the application shall be required of the board unless the program requests, within 30 days of the mailing of the decision, an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

3. If denial is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

4. If the recommendation of the informal conference committee to deny initial approval is accepted by the board or a panel thereof, the decision shall be reflected in a board order, and no further action by the board is required. The program may request a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

5. If the decision of the board or a panel thereof following a formal hearing is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

B. Withdrawal of initial program approval.

1. Initial approval shall be withdrawn and the program closed if:

a. The program has not admitted students within six months of approval of its application;

b. The program fails to submit evidence of progression toward full program approval; or

c. For any of the causes enumerated in 18VAC90-27-140.

2. If a decision is made to withdraw initial approval, no further action shall be required by the board unless the program within 30 days of the mailing of the decision

requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

3. If withdrawal of initial approval is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

4. If the recommendation of the informal conference committee to withdraw initial approval is accepted by the board or a panel thereof, the decision shall be reflected in a board order, and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

5. If the decision of the board or a panel thereof following a formal hearing is to withdraw initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

18VAC90-27-140. Causes for denial or withdrawal of nursing education program approval.

A. Denial or withdrawal of program approval may be based upon the following:

1. Failing to demonstrate compliance with program requirements in Part II (18VAC90-27-30 et seq.), III (18VAC90-27-150 et seq.), or IV (18VAC90-27-210 et seq.) of this chapter.

2. Failing to comply with terms and conditions placed on a program by the board.

3. Advertising for or admitting students without authority, board approval, or contrary to a board restriction.

4. Failing to progress students through the program in accordance with an approved timeframe.

5. Failing to provide evidence of progression toward initial program approval within a timeframe established by the board.

6. Failing to provide evidence of progression toward full program approval within a timeframe established by the board.

7. Failing to respond to requests for information required from board representatives.

8. Fraudulently submitting documents or statements to the board or its representatives.

9. Having had past actions taken by the board, other states, or accrediting entities regarding the same nursing education program operating in another jurisdiction.

10. Failing to maintain a pass rate of 80% on the NCLEX for graduates of the program as required by 18VAC90-27-210.

11. Failing to comply with an order of the board or with any terms and conditions placed upon it by the board for continued approval.

12. Having the program director, owner, or operator of the program convicted of a felony or a misdemeanor involving moral turpitude or his professional license disciplined by a licensing body or regulatory authority.

13. Failing to pay the required fee for a survey or site visit.

B. Withdrawal of nursing education program approval may occur at any stage in the application or approval process pursuant to procedures enumerated in 18VAC90-27-130, 18VAC90-27-160, and 18VAC90-27-230.

C. Programs with approval denied or withdrawn may not accept or admit additional students into the program effective upon the date of entry of the board's final order to deny or withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program shall comply with board requirements regarding closure of a program as stated in 18VAC90-27-240.

Part III

Full Approval for a Nursing Education Program

18VAC90-27-150. Granting full program approval.

A. Full approval may be granted when:

1. A self-evaluation report of compliance with Part II (18VAC90-27-30 et seq.) of this chapter and a survey visit fee as specified in 18VAC90-27-20 have been submitted and received by the board;

2. The program has achieved a passage rate of not less than 80% for the program's first-time test takers taking the NCLEX based on at least 20 graduates within a two-year period; and

3. A satisfactory survey visit and report have been made by a representative of the board verifying that the program is in compliance with all requirements for program approval.

B. If full approval is granted, the program shall continue to comply with all requirements in Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter, and admission of transfer students is authorized.

18VAC90-27-160. Denying full program approval.

A. Denial of full program approval may occur for causes enumerated in 18VAC90-27-140.

B. If full program approval is denied, the board shall also be authorized to do one of the following:

1. The board may continue the program on initial program approval with terms and conditions to be met within the timeframe specified by the board; or

2. The board may withdraw initial program approval.

C. If the board takes one of the actions specified in subsection B of this section, the following shall apply:

1. No further action will be required of the board unless the program within 30 days of the mailing of the decision

requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 the Code of Virginia.

2. If continued initial program approval with terms and conditions or withdrawal of initial approval is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order, and no further action by the board regarding the application is required. The program may request a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to deny full approval or withdraw or continue on initial approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program is denied full approval and initial approval withdrawn, no additional students may be accepted into the program, effective upon the date of entry of the board's final order to deny or withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program shall comply with board requirements regarding closure of a program as stated in 18VAC90-27-240.

18VAC90-27-170. Requests for exception to requirements for faculty.

After full approval has been granted, a program may request board approval for exceptions to requirements of 18VAC90-27-60 for faculty as follows:

1. Initial request for exception.

a. The program director shall submit a request for initial exception in writing to the board for consideration prior to the academic year during which the nursing faculty member is scheduled to teach or whenever an unexpected vacancy has occurred.

b. A description of teaching assignment, a curriculum vitae, and a statement of intent from the prospective faculty member to pursue the required degree shall accompany each request.

c. The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

2. Request for continuing exception.

a. Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree

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required by this chapter during each year for which the exception is requested.

b. The program director shall submit the request for continuing exception in writing prior to the next academic year during which the nursing faculty member is scheduled to teach.

c. A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

d. Any request for continuing exception shall be considered by the informal factfinding committee, which shall make a recommendation to the board.

18VAC90-27-180. Records and provision of information.

A. Requirements for admission, readmission, advanced standing, progression, retention, dismissal, and graduation shall be readily available to the students in written form.

B. A system of records shall be maintained and be made available to the board representative and shall include:

1. Data relating to accreditation by any agency or body.

2. Course outlines.

3. Minutes of faculty and committee meetings, including documentation of the use of a systematic plan of evaluation for total program review and including those faculty members in attendance.

4. Record of and disposition of complaints.

C. A file shall be maintained for each student. Provision shall be made for the protection of student and graduate files against loss, destruction, and unauthorized use. Each file shall be available to the board representative and shall include the student's:

1. Application, including the date of its submission and the date of admission into the program;

2. High school transcript or copy of high school equivalence certificate, and if the student is a foreign graduate, a transcript translated into English;

3. Current record of achievement to include classroom grades, skills checklists, and clinical hours for each course; and

4. A final transcript retained in the permanent file of the institution to include dates of admission and completion of coursework, graduation date, name and address of graduate, the dates of each semester or term, course grades, and authorized signature.

D. Current information about the nursing education program shall be published and distributed to students and applicants for admission and shall be made available to the board. In addition to information specified in 18VAC90-27-80 C, the following information shall be included:

1. Annual passage rates on NCLEX for the past five years; and

2. Accreditation status.

18VAC90-27-190. Evaluation of resources; written agreements with cooperating agencies.

A. Periodic evaluations of resources, facilities, and services shall be conducted by the administration, faculty, students, and graduates of the nursing education program, including an employer evaluation for graduates of the nursing education program. Such evaluation shall include assurance that at least 80% of all clinical experiences are conducted in Virginia unless an exception has been granted by the board.

B. Current written agreements with cooperating agencies shall be maintained and reviewed annually and shall be in accordance with 18VAC90-27-80 E.

C. Upon request, a program shall provide a clinical agency summary on a form provided by the board.

D. Upon request and if applicable, the program shall provide (i) documentation of board approval for use of clinical sites located 50 or more miles from the school, and (ii) for use of clinical experiences conducted outside of Virginia, documented approval from the agency that has authority to approve clinical placement of students in that state.

18VAC90-27-200. Program changes.

A. The following shall be reported to the board within 10 days of the change or receipt of a report from an accrediting body:

1. Change in the program director, governing body, or parent institution;

2. Adverse action taken by a licensing authority against the program director, governing body, or parent institution;

3. Conviction of a felony or misdemeanor involving moral turpitude against the program director, owner, or operator of the program;

4. Change in the physical location of the program;

5. Change in the availability of clinical sites;

6. Change in financial resources that could substantively affect the nursing education program;

7. Change in content of curriculum, faculty, or method of delivery that affects 25% or more of the total hours of didactic and clinical instruction;

8. Change in accreditation status; and

9. A final report with findings and recommendations from the accrediting body.

B. Other curriculum or faculty changes shall be reported to the board with the annual report required in 18VAC90-27-220 A.

Part IV

Continued Approval of Nursing Education Programs

18VAC90-27-210. Passage rate on national examination.

A. For the purpose of continued approval by the board, a nursing education program shall maintain a passage rate for

first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.

B. If an approved program falls below 80% for one year, it shall submit a plan of correction to the board. If an approved program falls below 80% for two consecutive years, the board shall place the program on conditional approval with terms and conditions, require the program to submit a plan of correction, and conduct a site visit. Prior to the conduct of such a visit, the program shall submit the fee for a site visit for the NCLEX passage rate as required by 18VAC90-27-20. If a program falls below 80% for three consecutive years, the board may withdraw program approval.

C. For the purpose of program evaluation, the board may provide to the program the NCLEX examination results of its graduates. However, further release of such information by the program shall not be authorized without written authorization from the candidate.

18VAC90-27-220. Maintaining an approved nursing education program.

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated as follows:

1. Every nursing education program that has not achieved accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every five years by submission of a comprehensive self-evaluation report based on Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter and a survey visit by a representative or representatives of the board on dates mutually acceptable to the institution and the board.

2. A program that has maintained accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

C. Interim site or survey visits shall be made to the institution by board representatives at any time within the initial approval period or full approval period as deemed necessary by the board. Prior to the conduct of such a visit,

the program shall submit the fee for a survey visit as required by 18VAC90-27-20.

D. Failure to submit the required fee for a survey or site visit may subject an education program to board action or withdrawal of board approval.

18VAC90-27-230. Continuing and withdrawal of full approval.

A. The board shall receive and review the self-evaluation and survey reports required in 18VAC90-27-220 B or complaints relating to program compliance. Following review, the board may continue the program on full approval so long as it remains in compliance with all requirements in Parts II (18VAC90-27-30 et seq.), III (18VAC90-27-150 et seq.), and IV (18VAC90-27-210 et seq.) of this chapter.

B. If the board determines that a program is not maintaining the requirements of Parts II, III, and IV of this chapter or for causes enumerated in 18VAC90-27-140, the board may:

1. Place the program on conditional approval with terms and conditions to be met within the timeframe specified by the board; or

2. Withdraw program approval.

C. If the board either places a program on conditional approval with terms and conditions to be met within a timeframe specified by the board or withdraws approval, the following shall apply:

1. No further action will be required of the board unless the program requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

2. If withdrawal or continued program approval with terms and conditions is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program approval is withdrawn, no additional students may be admitted into the program effective upon the date of entry of the board's final order to withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program must comply with board requirements regarding closure of a program as stated in 18VAC90-27-240.

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18VAC90-27-240. Closing of an approved nursing education program; custody of records.

A. When the governing institution anticipates the closing of a nursing education program, the governing institution shall notify the board in writing, stating the reason, plan, and date of intended closing.

The governing institution shall assist in the transfer of students to other approved programs with the following conditions:

1. The program shall continue to meet the standards required for approval until all students are transferred and shall submit a quarterly report to the board regarding progress toward closure.
2. The program shall provide to the board a list of the names of students who have been transferred to approved programs, and the date on which the last student was transferred.
3. The date on which the last student was transferred shall be the closing date of the program.

B. When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall be closed according to a timeframe established by the board.
2. The program shall provide to the board a list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.
3. The program shall provide quarterly reports to the board regarding progress toward closure.

C. Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The governing institution shall inform the board of the arrangements made to safeguard the records.
2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

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 (18VAC90-27)

[Application to Establish a Nursing Education Program \(rev. 10/2016\)](#)

[Survey Visit Report \(rev. 10/2016\)](#)

[Survey Visit Report for Programs Having Accreditation \(rev. 10/2016\)](#)

VA.R. Doc. No. R17-4643; Filed December 17, 2016, 1:47 p.m.

BOARD OF PHARMACY

Final Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-110).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: February 8, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments establish that (i) except in an emergency, a pharmacy cannot require a pharmacist to work longer than 12 continuous hours in any work day and shall allow at least six hours of off-time between consecutive shifts and (ii) a pharmacist working longer than six continuous hours is allowed to take a 30-minute break.

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 IV Pharmacies

18VAC110-20-110. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day [without being allowed and shall allow] at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break.

B. C. The pharmacist-in-charge (PIC) or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

C. D. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, he shall immediately return the pharmacy permit to the board indicating the effective date on which he ceased to be the PIC.

D. E. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Schedule II through V controlled

substances on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

~~E. F.~~ A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

~~F. G.~~ An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

~~G. H.~~ Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

~~H. I.~~ Before any permit is issued, the applicant shall attest to compliance with all federal, state and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after September 2, 2009.

VA.R. Doc. No. R12-19; Filed December 16, 2016, 4:23 p.m.

BOARD OF COUNSELING

Final 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.

Effective Date: February 8, 2017.

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.

Summary:

The 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%.

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

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:	<u>\$140</u>
Application processing and initial licensure	<u>\$175</u>
Initial licensure by endorsement:	<u>\$140</u>
Application processing and initial licensure	<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>
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.

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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: Application processing and initial certification	\$90 <u>\$115</u>
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	\$90 <u>\$115</u>
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	\$90 <u>\$115</u>
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	\$105 <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>

B. 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 <u>\$65</u>
Add/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	\$105 <u>\$130</u>
Inactive annual license renewal	\$55 <u>\$65</u>
Duplicate license	\$5 <u>\$10</u>
Verification of license to another jurisdiction	\$25 <u>\$30</u>
Late renewal	\$35 <u>\$45</u>
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.

VA.R. Doc. No. R16-4525; Filed December 16, 2016, 4:22 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

Title of Regulation: 22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-10 through 22VAC30-20-40, 22VAC30-20-60 through 22VAC30-20-181, 22VAC30-20-200; repealing 22VAC30-20-50).

Statutory Authority: § 51.5-131 of the Code of Virginia.

Effective Date: February 8, 2017.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Summary:

The amendments (i) remove or change the maximum amounts that the Department for Aging and Rehabilitative Services (DARS) pays for certain services; (ii) require that an individual seeking assistance with a four-year academic program must first attend two years at a community college unless the program is not offered or the disability-related need cannot be met at a community college; (iii) clarify that the minimum grade requirement established by the academic program must be met for continued

sponsorship in postsecondary schools; (iv) clarify that DARS follows the federal poverty guidelines in establishing the amount individuals are required to contribute to their vocational rehabilitation programs; (v) add specific procedures and specific guidelines to the review of determinations by DARS; and (vi) remove unnecessary or redundant provisions.

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

22VAC30-20-10. Definitions.

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

"Act" means the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for an individual with a disability or, if appropriate, the family members,

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guardians, advocates, or authorized representatives of the individual; and

6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

"Audiological examination" means the testing of the sense of hearing.

~~"Board" means the Board of Rehabilitative Services.~~

"Clear and convincing evidence" means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

"Client Assistance Program" means the program located within the disAbility Law Center of Virginia for the purpose of advising applicants or eligible individuals about all available services under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended, and to assist applicants and eligible individuals in their relationship with programs, projects, and facilities providing vocational rehabilitation services. ["]

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Community rehabilitation program" means a program that directly provides or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

2. Testing, fitting, or training in the use of prosthetic and orthotic devices;

3. Recreational therapy;

4. Physical and occupational therapy;

5. Speech, language, and hearing therapy;

6. Psychiatric, psychological, and social services, including positive behavior management;

7. Assessment for determining eligibility and vocational rehabilitation needs;

8. Rehabilitation technology;

9. Job development, placement, and retention services;

10. Evaluation or control of specific disabilities;

11. Orientation and mobility services for individuals who are blind;

12. Extended employment;

13. Psychosocial rehabilitation services;

14. Supported employment services and extended services;

15. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;

16. Personal assistance services; or

17. Services similar to the services described in subdivisions 1 through 16 of this definition.

For the purposes of this definition, the word "program" means an agency, organization, or institution, or unit of an agency, organization, or institution, that directly provides or facilitates the provision of vocational rehabilitation services as one of its major functions.

"Comparable services and benefits" means services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the individual at the time needed to ensure the individual's progress toward achieving the employment outcome in the individual's individualized plan for employment; and commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the Department for Aging and Rehabilitative Services. The department is considered the "designated state agency" or "state agency," meaning the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state

plan for vocational rehabilitation services. The department also is considered the "designated state unit" or "state unit," meaning the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

~~"Designated state agency" or "state agency" means the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state plan for vocational rehabilitation services.~~

~~"Designated state unit" or "state unit" means either the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.~~

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of ~~22VAC30-20-30 and~~ 22VAC30-20-40.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment in an integrated setting including self-employment, telecommuting, or business ownership that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (34 CFR 361.5(b)(16))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case (i) a preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services; (ii) a thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's impediment to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability; (iii) ~~any other~~ the provision of goods or services necessary to determine the nature of the disability and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of an employment outcome; (iv) ~~referral referrals~~ referrals to other agencies or organizations for services, when appropriate; and (v) the provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose

of determining whether the individual with a disability is capable of achieving an employment outcome.

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC § 201 et seq.). (34 CFR 361.5(b)(20))

"Extended evaluation" means the provision of vocational rehabilitation services necessary for a determination of vocational rehabilitation potential.

"Extended services" as used in the definition of "supported employment" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under ~~this section~~, 34 CFR Part 363 after an individual with a most significant disability has made the transition from support provided by the ~~designated state unit~~ department.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member" or "member of the family" means an individual (i) who is either a relative or guardian of an applicant or eligible individual, or lives in the same household as an applicant or eligible individual; (ii) who has a substantial interest in the well-being of that individual; and (iii) whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

~~"Higher education/institutions of higher education" means training or training services provided by universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.~~

"Impartial hearing officer" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the ~~designated state unit~~ department; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual ~~may is~~ is not ~~be~~ considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer. (34 CFR 361.5(b)(25))

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"Individual who is blind" means a person who is blind within the meaning of the applicable state law.

"Individual with a disability," except as provided in 34 CFR 361.5(b)(29), means an individual (i) who has a physical or mental impairment; (ii) whose impairment constitutes or results in a substantial impediment to employment; and (iii) who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. (34 CFR 361.5(b)(28))

~~"Individual with a disability," for purposes of 34 CFR 361.5(b)(14), 34 CFR 361.13(a), 34 CFR 361.13(b)(1), 34 CFR 361.17(a), (b), (c), and (j), 34 CFR 361.18(b), 34 CFR 361.19, 34 CFR 361.20, 34 CFR 361.23(b)(2), 34 CFR 361.29(a) and (d)(5) and 34 CFR 361.51(b), means an individual (i) who has a physical or mental impairment that substantially limits one or more major life activities; (ii) who has a record of such an impairment; or (iii) who is regarded as having such an impairment. (34 CFR 361.5(b)(29))~~

"Individual with a most significant disability" means an individual with a significant disability who meets the ~~designated state unit's~~ department's criteria for an individual with a most significant disability. (34 CFR 361.5(b)(30))

"Individual with a significant disability" means an individual with a disability (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, ~~mental retardation~~ intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. (34 CFR 361.5(b)(31))

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative. (34 CFR 361.5(b)(32))

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with

nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals. "Integrated setting," with respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons. (34 CFR 361.5(b)(33))

"Local workforce investment board" means a local workforce investment board established under ~~section~~ § 117 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(34))

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. (34 CFR 361.5(b)(35))

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified impartial mediator. (34 CFR 361.5(b)(36))

~~"Mental disability" means (i) having a disability attributable to mental retardation, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual.~~

"Nonprofit," with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986. (34 CFR 361.5(b)(37))

"One-stop center" means a center designed to provide a full range of assistance to job seekers under one roof. Established under the Workforce Investment Act of 1998, the centers offer training, career counseling, job listings, and similar employment related services.

"Ongoing support services," as used in the definition of "supported employment," means services that are needed to support and maintain an individual with a most significant

disability in supported employment; identified based on a determination by the ~~designated state unit~~ department of the individual's needs as specified in an individualized plan for employment; and furnished by the ~~designated state unit~~ department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. These services ~~must~~ shall include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on, at a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or if under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual. These services ~~must~~ shall consist of any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in ~~this section~~ subsection A of 22VAC30-20-100; the provision of skilled job trainers who accompany the individual for intensive job skill training at the ~~work-site~~ worksite; job development and ~~placement~~ training; social skills training; regular observation or supervision of the individual; follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; facilitation of natural supports at the worksite; any other service identified in the scope of vocational rehabilitation services for individuals described in 22VAC30-20-120; or any service similar to the foregoing services. (34 CFR 361.5(b)(38))

~~"Otolological examination" means any examination conducted by a physician skilled in otology.~~

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a

stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry; nursing services; necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; drugs and supplies; prosthetic, orthotic, or other assistive devices, including hearing aids; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired and prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical therapy; occupational therapy; speech or hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, ~~musculo-skeletal~~ musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin, and endocrine; or any mental or psychological disorders such as ~~mental retardation~~ intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 CFR 361.5(b)(41))

"Post-employment services" means one or more of the services identified in 22VAC30-20-120 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests and informed choice. (34 CFR 361.5(b)(42))

"Prevocational training" means individual and group instruction or counseling, the controlled use of varied activities, and the application of special behavior modification techniques; ~~individuals~~. Individuals or patients are helped to: (i) develop physical and emotional tolerance for work demands and pressures, (ii) acquire personal-social behaviors which would make them acceptable employees and coworkers on the job, and (iii) develop the basic manual, academic, and communication skills needed to acquire basic job skills.

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~~"Prosthetic and orthotic appliances" means any mechanical equipment that improves or substitutes for one or more of man's senses or for impaired mobility or motor coordination.~~

~~"Public safety officer" means an individual who performs duties directly related to the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities, and whose substantially limiting condition arose from a disability sustained in the line of duty while performing as a public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition.~~

"Qualified and impartial mediator" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the ~~designated state unit department~~; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the ~~designated state agency or designated state unit department~~ for the purposes of this definition solely because the individual is paid by the ~~designated state agency or designated state unit department~~ to serve as a mediator. (34 CFR 361.5(b)(43))

~~"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities, and which provides singly or in combination one or more of the following services for individuals with disabilities: (i) vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services; (ii) testing, fitting, or training in the use of prosthetic and orthotic devices; (iii) prevocational conditioning or recreational therapy; (iv) physical and occupational therapy; (v) speech and hearing therapy; (vi) psychological and social services; (vii) evaluation of rehabilitation potential; (viii) personal and work adjustment; (ix) vocational training with a view toward career advancement (in combination with other rehabilitation services); (x) evaluation or control of specific disabilities; (xi) orientation and mobility services and other adjustment services to individuals who are blind; and (xii) transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market.~~

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

~~"Services to groups" means the provision of facilities and services which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual with a disability.~~

"State" means the Commonwealth of Virginia.

"State plan" means the state plan for vocational rehabilitation services ~~or the vocational rehabilitation services part of a consolidated rehabilitation plan~~ submitted under 34 CFR 361.10(c). (34 CFR 361.5(b)(51))

"State workforce investment board" means a state workforce investment board established under § 111 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(49))

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

"Supported employment" means (i) competitive employment in an integrated setting; or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and who, because of the nature of their disabilities, need intensive supported employment services from the ~~designated state unit department~~ and extended services after transition to perform this work or (ii) transitional employment for individuals with the most significant disabilities due to mental illness. (34 CFR 361.5(b)(53))

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the ~~designated state unit department~~ (i) for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time ~~in order~~ to achieve the employment outcome identified in the individualized plan for employment; and (ii) following transition; as post-employment services that are unavailable from an extended

services provider and that are necessary to maintain or regain the job placement or advance in employment. (34 CFR 361.5(b)(54))

"Transition services" means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including ~~post-secondary~~ postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment. (34 CFR 361.5(b)(55))

"Transitional employment," as used in the definition of "supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most ~~severe~~ significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. (34 CFR 361.5(b)(57))

"Vocational rehabilitation potential" mean the ability of the individual with a disability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

"Vocational rehabilitation services" means those services listed in 22VAC30-20-120.

~~"Work adjustment training" means a treatment and training process utilizing individual and group work, or work related activities, to assist individuals in understanding the meaning, value and demands of work; to modify or develop attitudes, personal characteristics, work behavior, and to develop functional capacities, as required in order to assist individuals toward their optimum level of vocational development.~~

22VAC30-20-20. Processing referrals and applications.

A. Referrals. The ~~designated state unit~~ department must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through ~~the One-Stop service delivery systems established under § 121 of the Workforce Investment Act of 1998~~ a one-

stop center. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services. (34 CFR 361.41(a))

B. Applications.

1. Once an individual has submitted an application for vocational rehabilitation services, an eligibility determination shall be made within 60 days, unless (i) exceptional and unforeseen circumstances beyond the control of the ~~designated state unit~~ department preclude making a determination within 60 days and the ~~designated state agency~~ department and the individual agree to a specific extension of time or (ii) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out ~~in accordance with 22VAC30-20-50~~ or, if appropriate, an extended evaluation is necessary. (34 CFR 361.41(b)(1))

2. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate (i) has completed and signed an agency application form, a common intake application form in a ~~One-Stop~~ one-stop center requesting vocational rehabilitation services, or has otherwise requested services from the ~~designated state unit~~ department; (ii) has provided information to the ~~designated state unit~~ department that is necessary to initiate an assessment to determine eligibility and priority for services; and (iii) is available to complete the assessment process. (34 CFR 361.41(b)(2))

3. The ~~designated state unit~~ department shall ensure that its application forms are widely available throughout the state, particularly in the ~~One-Stop~~ one-stop centers ~~established under § 121 of the Workforce Investment Act of 1998.~~ (34 CFR 361.41(b)(3))

~~4. A face to face interview with the applicant is required.~~

22VAC30-20-30. Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the ~~designated state unit will~~ department shall conduct an assessment for determining eligibility and priority for services. The assessment ~~must~~ shall be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

1. Eligibility requirements are applied without regard to race, age, gender, color, or national origin;
2. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;
3. The eligibility requirements are applied without regard to the particular service needs or anticipated cost of

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services required by an applicant or the income level of an applicant or applicant's family, or the type of expected employment outcome, or the source of referral for vocational rehabilitation services; and

4. No duration of residence requirement is imposed that excludes from services any individual who is present in the state. (34 CFR 361.42(c))

22VAC30-20-40. Eligibility requirements.

A. Basic requirements. The ~~designated state unit's~~ department's determination of an applicant's eligibility for vocational rehabilitation services ~~is shall be~~ based only on the following requirements: (i) a determination by qualified personnel that the applicant has a physical or mental impairment; (ii) a determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (iii) a presumption, in accordance with subsection B of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and (iv) a determination by a qualified vocational rehabilitation counselor employed by the ~~designated state unit~~ department that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

B. Presumption of benefit. The ~~designated state unit will~~ department shall presume that an applicant who meets the basic eligibility requirements in clauses (i) and (ii) of subsection A of this section can benefit in terms of an employment outcome unless ~~it~~ the department demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment from vocational rehabilitation services due to the severity of the applicant's disability.

C. Presumption of eligibility for Social Security beneficiaries. The ~~designated state unit must~~ department shall assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the ~~designated state unit will~~ department shall presume that the applicant (i) meets the eligibility requirements in clauses (i) and (ii) of subsection A of this section and (ii) is an individual with a significant disability as defined in 22VAC30-20-10.

D. Achievement of an employment outcome. Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

1. The ~~state unit is~~ department shall be responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

2. The applicant's completion of the application process for vocational rehabilitation services ~~is shall be~~ sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying this section.

E. Interpretation of entitlement. Nothing in this section ~~is to~~ shall be construed to create an entitlement to any vocational rehabilitation service.

F. Review and assessment of data for eligibility determination. Except as provided in 22VAC30-20-60, the ~~designated state unit~~ department shall base its determination of each of the basic eligibility requirements in subsection A of this section on:

1. A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

2. To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

G. Trial work experience for individuals with significant disabilities. Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, ~~an~~ exploration of the department shall explore the individual's abilities, capabilities, and capacity to perform in a realistic work situation ~~is required~~ in accordance with 34 CFR 361.42 to determine whether or not there is clear and convincing evidence to support such a determination.

22VAC30-20-50. Evaluation of vocational rehabilitation potential. (Repealed.)

~~A. Required evaluations. The current general health of the individual shall be assessed, based, to the maximum extent possible, on available medical information. In all cases of mental or emotional disorders an examination shall be provided by a physician licensed to diagnose and treat such disorders or a psychologist licensed or certified in accordance with state laws and regulations. If eligibility cannot be determined from medical evidence of record, medical~~

~~specialist examinations needed to determine eligibility shall be provided.~~

~~B. Hospitalization for diagnosis may be provided when all of the following conditions are met:~~

- ~~1. This service is required in order to determine eligibility for services or type of services needed; and~~
- ~~2. This service is recommended by a licensed medical doctor.~~

~~The maximum period of diagnostic hospitalization shall be three days.~~

22VAC30-20-60. Extended evaluation for individuals with significant disabilities.

A. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the ~~state unit~~ department is able to make an eligibility determination for vocational rehabilitation services, the ~~state unit must~~ department shall conduct an extended evaluation to make the determination that (i) there is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability

B. During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services ~~must~~ shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

C. During the extended evaluation period, the ~~designated state unit must~~ department shall develop a written plan for providing services that are necessary to make the determinations in subsection A of this section. The ~~state unit~~ department may provide during this period only those services that are necessary to make these two determinations. (34 CFR 361.42)

D. The ~~state unit~~ department shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

E. The ~~state unit~~ department shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the ~~state unit~~ department determines that (i) there is sufficient evidence to conclude that the individual can benefit from vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

22VAC30-20-70. Certification of eligibility.

A. For vocational rehabilitation services₂, before or at the same time the applicant is accepted for services₂ the

department shall certify that the applicant has met the basic eligibility requirements as specified in 22VAC30-20-40.

B. For extended evaluation₂, as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be certification that the applicant has met the requirements as specified in 22VAC30-20-60.

22VAC30-20-80. Procedures for ineligibility determination.

A. Certification of ineligibility. If the ~~state unit~~ department determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, ~~that state unit must~~ the department shall:

1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative₂;
2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a ~~state unit~~ department personnel determination in accordance with 22VAC30-20-181₂;
3. Provide the individual with a description of services available under the Client Assistance Program, ~~Virginia Office of Protection and Advocacy~~, and information on how to contact that program₂;
4. Refer the individual to other training or employment-related programs that are part of the ~~One Stop service delivery system under the Workforce Investment Act~~, one-stop centers or, if the ineligibility determination is based on a finding that the individual is incapable of achieving an employment outcome as defined in 22VAC30-20-10, to local extended employment providers; and
5. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative₂, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. The review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the ~~Commonwealth~~ state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

B. Case closure without eligibility determination. The ~~state unit may~~ department shall not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete₂, an assessment for determining eligibility and priority for services, and the ~~state unit~~ department has made a

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reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

22VAC30-20-90. Order of selection for services.

A. In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council. The order of selection shall determine those persons to be provided services. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. ~~Person~~ Persons eligible and presently receiving services under an individualized plan for employment; ~~;~~
2. ~~Those persons~~ Persons referred and needing diagnostic services to determine eligibility; ~~;~~ and
3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:
 - a. Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10; ~~;~~
 - b. Priority II. An individual with a significant disability that results in serious functional limitations in two functional capacities; ~~;~~
 - c. Priority III. An individual with a significant disability that results in a serious functional limitation in one functional capacity; ~~;~~ and
 - d. Priority IV. Other persons determined to be disabled, in order of eligibility determination.

B. An order of selection ~~may~~ shall not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the ~~designated state unit must~~ department shall (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in ~~a state's~~ the order of selection, their assignment to a particular category; and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of

selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the ~~designated state unit must~~ department shall renegotiate these funding arrangements so that they are consistent with the order of selection.

D. Consultation with the State Rehabilitation Council ~~must~~ shall include (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.

22VAC30-20-95. Information and referral services.

A. The ~~designated state unit will~~ department shall implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the ~~state unit's~~ department's order of selection criteria for receiving vocational rehabilitation services if the ~~agency~~ department is operating ~~on~~ under an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.

B. The ~~state unit will~~ department shall refer individuals with disabilities to other appropriate federal and state programs, including other components of the statewide workforce investment system. In making these referrals, the ~~designated state unit must~~ department shall:

1. Refer the individuals to federal or state programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability; and
2. Provide the individual who is being referred (i) a notice of the referral by the ~~designated state unit~~ department to the agency carrying out the program; (ii) information identifying a specific point of contact within the agency to which the individual is being referred; and (iii) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

22VAC30-20-100. The individualized plan for employment procedures.

A. General requirements.

1. An individualized plan for employment meeting the requirements of this section shall be developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services; or, if the ~~designated state unit~~ department is

operating under an order of selection in accordance with 22VAC30-20-90, for each eligible individual to whom the ~~state unit~~ department is able to provide services. Services ~~will~~ shall be provided in accordance with the provisions of the individualized plan for employment.

2. The ~~state unit must~~ department shall conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or; if the ~~state department~~ department is operating under an order of selection, ~~the department shall conduct an assessment~~ for each eligible individual to whom the ~~state department~~ department is able to provide services. The purpose of this assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

a. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individualized plan for employment ~~must~~ shall be determined based on data from assessment of eligibility and priority of services under 22VAC30-20-30.

b. If additional data are necessary to determine the employment outcome and the nature and scope of services, the ~~state unit must~~ department shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible. In preparing the comprehensive assessment, the ~~state unit must~~ department shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment. This includes information (i) available from other programs and providers, ~~particular~~ particularly information used by the education system and the Social Security Administration; (ii) ~~information~~ provided by the individual and the individual's family; and (iii) ~~information~~ obtained under the assessment for determining the individual's eligibility and vocational needs.

3. The individualized plan for employment shall be a written document prepared on forms provided by the ~~state unit~~ department.

4. Vocational rehabilitation services shall be provided in accordance with the provisions of the individualized plan for employment. An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment with or without assistance from the ~~state unit~~ department or other entity. The individualized plan for employment ~~must~~ shall be approved and signed by the qualified vocational rehabilitation counselor employed by the ~~designated state~~

~~unit~~ department and the individual or, as appropriate, the individual's representative. The ~~state unit~~ department shall establish and implement standards for the prompt development of individualized plans for employment for the individuals identified in subdivision 1 of this subsection, including timelines that take into consideration the needs of the individual.

5. The ~~state unit~~ department shall promptly provide each individual or, as appropriate, the individual's representative a written copy of the individualized plan for employment and its amendments in the native language or appropriate mode of communication of the individual or, as appropriate, ~~of~~ the individual's representative.

6. The ~~state unit~~ department shall advise in writing each individual or, as appropriate, the individual's representative of all ~~state unit~~ department procedures and requirements affecting the development and review of an individualized plan for employment, including the availability of appropriate modes of communication.

7. The individualized plan for employment for a student with a disability who is receiving special education services must be coordinated with the ~~IEP~~ individualized education program for that individual in terms of goals, objectives, and services identified in the ~~IEP~~ individualized education program.

B. Individualized plan for employment review. The ~~state unit~~ department shall review the plan with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in achieving the identified employment outcome. The plan may be amended as necessary if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services. Amendments to the plan do not take effect until agreed to and signed by the individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the ~~designated state unit~~ department.

~~C. Review of ineligibility determination. If the state unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the state unit shall:~~

~~1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;~~

~~2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures~~

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~~for review of a determination by the rehabilitation counselor or coordinator. The state unit shall provide the individual with a description of services available from the Client Assistance Program, Virginia Office of Protection and Advocacy, established under 34 CFR Part 370, and information on how to contact that program;~~

~~3. Refer the individual to other training or employment-related programs that are part of the One Stop delivery system under the Workforce Investment Act; and~~

~~4. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal (34 CFR 361.43).~~

22VAC30-20-110. Individualized plan for employment content.

A. Regardless of the option in 22VAC30-20-100 chosen by the eligible individual for developing the individualized plan for employment, each plan for employment ~~must~~ shall include the following:

1. A description of the ~~specific~~ employment outcome, as defined in 22VAC30-20-10, that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice of the individual, and results in employment in an integrated setting;

2. A description of the ~~specific~~ vocational rehabilitation services provided under 22VAC30-20-120 that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and services and personal assistance services, including training in the management of those services, and providing in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

3. Timelines for the achievement of the employment outcome and for the initiation of services;

4. A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

5. A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome;

6. The terms and conditions of the individualized plan for employment, including, as appropriate, information describing the responsibilities of the ~~designated state unit~~

department, the responsibilities the eligible individual ~~will~~ shall assume in relation to achieving the employment outcome, the extent of the eligible individual's participation in paying for the cost of services, the responsibility of the individual with regard to applying for and securing comparable services and benefits as described in 22VAC30-20-170, and the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements in 22VAC30-20-170;

7. ~~The~~ A statement of the rights of the individual under this ~~part~~ chapter and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of determinations made by ~~designated state unit~~ department personnel;

8. ~~The~~ A statement of the availability of the Client Assistance Program, ~~with the Virginia Office of Protection and Advocacy;~~

9. The basis on which the individual has been determined to have achieved an employment outcome;

10. A statement concerning the expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

11. A description of the terms and conditions for the provision of any post-employment services; and

12. If appropriate, a statement of how post-employment services ~~will~~ shall be provided or arranged through other entities as the result of arrangements made pursuant to the comparable benefits and services requirement.

B. Supported employment. In addition to the requirements in subsection A of this section, the individualized plan for employment for an individual with a most significant disability for whom supported employment has been determined appropriate ~~must~~ shall also:

1. Specify the supported employment services to be provided by the ~~designated state unit~~ department;

2. Specify the expected extended services needed, which may include natural supports;

3. Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

4. Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

5. Provide for the coordination of services provided under an individualized plan for employment with services

provided under other individualized plans established under other federal or state programs;

6. To the extent that job skills training is provided, identify that the training ~~will~~ shall be provided on site; and

7. Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the ~~designated state unit must~~ department shall ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

1. Assessment for determining eligibility and priority for services and assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with 22VAC30-20-10.

2. Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about the Client Assistance Program ~~under the Virginia Office of Protection and Advocacy.~~

4. Physical and mental restoration services, in accordance with the definition of 22VAC30-20-10, to the extent that financial support is not readily available from a source other than the ~~designated state unit~~ department (such as through health insurance or comparable services and benefits as defined in 22VAC30-20-10).

a. These services include but are not limited to:

~~(1) Convalescent care, nursing or rest home care when the services are directly related to the vocational rehabilitation objective for an individual who needs continued medical supervision after department-sponsored treatment for his condition. This service must be recommended by the proper medical practitioner before the service is authorized and is contingent upon the individual being able to reengage in the vocational rehabilitation program. This service may be provided for 30 days, and the commissioner or his designee may approve an additional 30 days of service.~~

~~(2) Dentistry.~~

~~(3) Drugs and supplies. When medication is to be continuous (e.g., treatment of diabetes or epilepsy), and while the individual is receiving vocational training, the department may purchase medication during the training period and for a period not to exceed 90 days after achieving employment. When counseling, medication and placement are the only services provided, the department may pay for medication for a period not to exceed 90 days. Generic drugs shall be utilized when possible.~~

~~(4) Necessary hospitalization (either inpatient or outpatient care, in connection with surgery or treatment and clinic services). The department may pay for hospitalization for medical diagnosis, surgical or medical treatment when deemed necessary for the vocational rehabilitation of the individual and recommended by a licensed practitioner. Hospitalization shall be provided in hospitals, medically oriented treatment facilities, or continuing care facilities in Virginia or out of state, with which the department has a contract. Payment to hospitals, medically oriented treatment facilities, or continuing care facilities shall be made in accordance with the department fee schedules. The maximum period of hospitalization, excluding diagnostic, to be authorized based upon financial resources available to the department shall be 10 days. Extension of the maximum period of hospitalization shall be allowed when due to acute medical complications and emergencies associated with or arising out of the provision of physical or mental restoration services. Treatment of acute medical complications or emergencies which impact negatively on the individual's progress toward the individual's vocational goal shall be provided.~~

~~(5) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws. These services may be provided to an individual when their visual disability, as established by an ophthalmological or an optometric examination, is of such severity that their employment opportunities are considerably limited. Visual services shall be provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired. Visual aids may also be provided to individuals who are unable to satisfactorily pursue their vocational rehabilitation program due to impaired vision.~~

~~(6) Nursing services.~~

~~(7) Physical restoration in a rehabilitation facility.~~

~~(8) Physical and occupational therapy when prescribed by a doctor of medicine.~~

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~~(9) Prosthetic, orthotic, or other assistive devices, including hearing aids. The department may purchase an original appliance only upon the recommendation of the medical specialist. When an individual has a history of satisfactory appliance use and the general medical examination report indicates no pathological change, this report may be sufficient medical basis for the replacement or repair of the appliance. The department shall purchase prosthetic or orthotic appliances from vendors approved in accordance with the department's vendor approval process.~~

~~(10) Mental health services or diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws shall be provided by a psychiatrist or psychologist. If the department purchases the services from either, they must be qualified in the area of psychotherapy and be licensed in accordance with the laws of the Commonwealth. The maximum number of sessions to be sponsored shall be 27. If the individual needs additional psychotherapy, the department will make an effort to assist the individual in securing it.~~

~~(11) Speech or hearing therapy. Speech therapy may be provided to individuals when treatment is recommended by a speech pathologist who is licensed in accordance with the laws of the Commonwealth. Hearing aid orientation and lip reading may be provided when recommended by a specialist in hearing disabilities.~~

~~(12) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or substantially modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.~~

~~(13) Podiatry.~~

~~(14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services that are inherent in the condition under treatment.~~

~~(15) Special services for the treatment of individuals with end stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies.~~

~~(16) Chiropractic services, after consultation with a doctor of medicine.~~

~~(17) Cardiac exercise therapy for individuals who have had a myocardial infarction or a coronary bypass not more than six months prior to the recommended exercise therapy. A maximum of 24 sessions may be authorized.~~

~~(18) Other medical or medically related rehabilitation services.~~

~~b. a. Eligibility requirements.~~

~~(1) Stable or slowly progressive. The physical or mental condition ~~must~~ shall be stable or slowly progressive. The~~

~~condition ~~must~~ shall not be acute or transitory, or of such recent origin that the resulting functional limitations and the extent to which the limitations affect occupational performance cannot be identified.~~

~~(2) Refusal of service. When an individual has a physical or mental disability with resulting limitations that constitute a ~~handicap~~ barrier to employment, and when in the opinion of licensed medical personnel these limitations can be removed by physical or mental restoration services without injury to the individual, ~~they~~ the individual shall not be eligible for any rehabilitation services, except counseling, guidance and placement if ~~they refuse~~ he refuses to accept the appropriate physical or mental restoration services. A second opinion may be provided at the individual's request. In the event of conflicting medical opinions, the department shall secure a third opinion and the decision shall be made on the two concurring opinions.~~

~~e. b. Provision of physical and mental restoration services. These services ~~are~~ shall be provided only when:~~

- ~~(1) Recommended by a licensed practitioner;~~
- ~~(2) Services are not available from another source; and~~
- ~~(3) They are provided in conjunction with counseling and guidance, and other services, as deemed appropriate.~~

~~The department shall not make case expenditures for acute or intermediate medical care except for medical complications and emergencies ~~which~~ that are associated with or arise out of the provision of ~~Vocational Rehabilitation (VR)~~ vocational rehabilitation services under an individualized plan for employment and ~~which~~ that are inherent in the condition under treatment.~~

~~d. c. Services not sponsored by the department. The ~~board~~ department, in consultation with appropriate medical resources, shall determine those ~~physical~~ restoration services that shall ~~not~~ be provided by the department. The following ~~circumstances or conditions~~ procedures shall ~~not~~ be considered provided:~~

- ~~(1) Experimental procedures ~~shall not be sponsored~~;~~
- ~~(2) High risk procedures;~~
- ~~(3) Procedures with limited vocational outcomes or procedures not related to the vocational outcome; and~~
- ~~(4) Procedures with uncertain outcomes.~~

5. Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in institutions of higher education (universities, colleges, ~~community/junior~~ community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this section unless maximum efforts have been made by the ~~state unit~~ department and the individual to secure

grant assistance in whole or in part from other sources to pay for that training.

All training services provided shall be related to attainment of the vocational objective or provide for the determination of eligibility for vocational rehabilitation services. Vocational training includes any organized form of instruction ~~which~~ that provides the knowledge and skills essential for performing the tasks involved in an occupation. Vocational training may be obtained in institutions such as colleges, universities, business schools, nursing schools, and trade and technical schools. It may also be obtained by on-the-job training, apprenticeship programs, tutorial training, or correspondence study.

a. ~~Business schools and business colleges, trade and technical schools, and two year college terminal courses. The training institution selected shall be approved in accordance with the department's vendor approval process. Approved training institutions. Only training institutions approved in accordance with the department's vendor approval process shall be used.~~

b. College and university academic training.

(1) Academic requirements. The individual shall take sufficient academic credit hours based on the requirement of the college attended for classification as a full-time student, unless this is, in the opinion of the department, contraindicated by the individual's disability. Courses shall meet the institution's requirement towards the obtainment of the degree or certificate. Continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated on an academic year the grade average required by the institution for the particular course of study. When the institution has no grade requirement, continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated over the academic year. When the individual fails to maintain a "C" the required academic grade average, assistance may be discontinued. The department's assistance may be reinstated when the individual completes one semester or quarter with a the minimum of a "C" required grade average.

Each individual shall be advised that failure to provide grades to the department shall be grounds for termination of departmental financial assistance.

(2) Graduate degree program. The department shall assist ~~only eligible individuals with severe disabilities~~ in securing a graduate degree ~~and~~ only when it is judged essential to achieving an employment goal agreed to by the department and the individual.

(3) Virginia colleges and universities. Vocational training, including college or university training, shall be provided by the department in ~~any department approved institution~~ department-approved institutions located within the boundaries of the Commonwealth, unless such

training is not available within the Commonwealth. Institutions in the areas of Washington, D.C.; Bristol-Johnson City-Kingsport, Tennessee; the city of Bluefield, West Virginia; and other cities where the services may be provided more effectively and economically and shall be treated as if located in Virginia.

(4) Tuition and mandatory fees. The department may pay tuition for college and university training in an amount not in excess of the highest amount charged for tuition by a state-supported institution or the rate published in the catalog, whichever is less, except where out-of-state or private college is necessary, published. Published tuition costs in excess of the highest amount charged by a state-supported institution may be necessary and may be paid by the department if no state-supported institution is available that offers the degree program needed to achieve the established employment goal, if no state-supported program offers disability-related supports to enable the individual to achieve the established employment goal, or if an out-of-state or private program is more economical for the department.

~~Any individual enrolling into any college/university course or courses for the primary purpose of course or program certification and not for the purpose of obtaining a degree shall be exempt from the application of the annual maximum tuition rate.~~

(5) Scholarships and grants. Training services in institutions of higher education shall be paid for with departmental funds only after maximum efforts have been made by the individual to secure assistance in whole or in part from other sources; however, any individual eligible for vocational rehabilitation training services but not meeting the financial need test of the department may be provided an assistance grant annually in an amount not to exceed the equivalent of one quarter's tuition of a ~~full-time~~ full-time community college student.

c. Correspondence study. The correspondence study training may be authorized only when:

(1) The individual requires specific preliminary training in order to enter a training program or training cannot be arranged by any other method; and

(2) Satisfactory progress is maintained.

d. On-the-job training. The department may enter into agreements with employers in the private or public sector to provide on-the-job training services. The terms and conditions of each individual agreement shall be established by the department.

e. Part-time training. Part-time training may be utilized only when the severity of the individual's disability shall not allow the individual to pursue training on a full-time basis.

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Part-time training shall be authorized only at department-approved facilities and schools.

f. Work adjustment training. Work adjustment training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

g. Prevocational training. Prevocational training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

h. Tutorial training. Tutorial training may be provided if needed for the individual to achieve a vocational goal as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

i. Other higher education training concerns.

(1) Required textbooks and supplies. The maximum amount of ~~department~~ departmental financial assistance for required textbooks and supplies (pencils, paper, etc.) shall be ~~\$400 annually for a normal school year or \$500 if summer school is attended~~ not exceed the amount determined by the institution for books and supplies in the student's school budget.

(2) Required training materials. Training materials may be provided when required by the instructor.

6. Maintenance in accordance with the definition of that term in 22VAC30-20-10.

a. Clothes. Clothes ~~are~~ shall be provided when specifically required for participation in a training program or for placement in a specialized job area as determined by the department.

b. Room, board, and utilities. The maximum rate paid for room, board, and utilities shall be established annually by the ~~board~~ department.

~~e.~~ (1) Training cases. The maximum amount of ~~department~~ departmental financial assistance for room and board at a training institution (college, vocational school, rehabilitation center facility), when the institution is able to provide room and board, shall not exceed the published room and board rates charged by the institution, or the actual cost, whichever is less.

~~f.~~ (2) While living at home. Maintenance shall be provided for an individual living at home only when the individual's income supports the family unit of the individual, when it is more cost effective for the department, or when it is in the best interest of the

individual's vocational rehabilitation program based on mutual agreement of the rehabilitation counselor and the individual.

7. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in 22VAC30-20-10. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

a. Transportation costs. The department shall pay the most economical rate for accessible public transportation. When public transportation is not available, or the individual, because of disability, cannot travel by public transportation, transportation may be provided at a rate ~~not to exceed \$0.12 a mile~~ established by the department.

b. For and during training services. When the individual must live at the training location, the department may only pay for a one-way trip from the residence to the training location at the beginning of the training; and a one-way trip from the training location to the residence or job site at the conclusion of the training program. Transportation may be paid to and from the residence in case of emergency (severe illness; or death in family; acute business emergency or prolonged school closing such as Christmas holidays). Local bus fare also may be ~~furnished also~~ provided. When the individual's physical condition is such that travel by public conveyance is impossible, taxi fare may be allowed from place of residence to training site and return. When the individual lives at home and the training site requires daily transportation, the cost of such transportation may be paid.

8. Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome. Services to family members of the individual may be provided when such services may be expected to contribute substantially to the determination of vocational rehabilitation potential or to the rehabilitation of the individual. In order for the department to furnish these services, they shall not be available from any other source.

a. Family member is defined in 22VAC30-20-10.

b. Day care services for dependent children. The department may pay up to the amount paid per child, per day, by the local social services department in the locality in which the child is located. When more than one child is involved, rates for the additional children ~~should~~ may be lower. When satisfactory accommodations can be secured at a rate lower than that paid by the local social services department, the lower rate shall be paid by the department.

9. Interpreter services, including sign language and oral interpreter services; for individuals who are deaf or hard of hearing ~~and~~; tactile interpreting services for individuals who are deaf-blind; and reader services, rehabilitation

teaching services, and orientation and mobility services for individuals who are blind.

a. Upon request of the individual or as needed, these services may be provided at any stage during the rehabilitation process. Interpreting may be primarily in the form of sign language (manual method) or oral interpretation (oral method).

b. The department shall pay for interpreting services when these services contribute to the individual's vocational rehabilitation program.

c. ~~The interpreter must be, whenever possible, certified by the National Registry of the Deaf, Virginia Registry of the Deaf, or approved by the Virginia Department for the Deaf and Hard-of-Hearing shall hold at least one of the credentials approved by the Virginia Department for the Deaf and Hard-of-Hearing pursuant to § 51.5-113 of the Code of Virginia.~~

d. When individuals with deafness are in a training program, the department shall arrange for note taking or reader services, unless the individual indicates such service is not needed or desired.

10. Rehabilitation technology, in accordance with the definition of that term in 22VAC30-20-10, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

a. Telecommunications system. Services related to use of a telecommunications system shall meet established federal or state health and safety standards and be consistent with written state policies.

b. Sensory and other technological aids and devices. The department may provide electronic or mechanical pieces of equipment or hardware intended to improve or substitute for one or more of the human senses, or for impaired mobility, or motor coordination.

Services related to use of sensory and other technological aids and devices shall meet established federal or state health and safety standards and be consistent with state law and regulations.

(1) An otological evaluation may be required, and an audiological examination ~~is~~ shall be required before the department may purchase a hearing aid.

(2) The department shall purchase hearing aids only for those individuals identified as benefiting in terms of employability as a direct result of such aid.

~~(3) Cross and bicross aids may be purchased only when it is justifiable on the basis of the vocational objective.~~

~~(4) Eyeglasses and hearing aids may be purchased only when they are equal in performance in terms of volume and speech discrimination and if the cost is not higher than that of a comparable body aid or a behind the ear aid.~~

11. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

12. Job search and placement assistance and job retention services, follow-up services, and follow-along services. Placement shall be in accordance with the mutually agreed upon vocational objective and is the responsibility of both the individual and the department, ~~particularly the rehabilitation counselor.~~

13. Post-employment services, in accordance with the definition of that term in 22VAC30-20-10.

a. Selection criteria. ~~Any rehabilitated~~ All individuals whose vocational rehabilitation cases have been closed as achieving an employment outcome may be considered for post-employment services. The department may evaluate with each individual the need for such services.

b. All of the following criteria shall be met for ~~the selection of individuals~~ an individual to receive post-employment services:

(1) The individual ~~has~~ shall have been determined to be ~~rehabilitated~~ have achieved an employment outcome;

(2) The disabling medical condition shall be stable or slowly progressive;

(3) Post-employment services ~~are~~ shall be necessary to assist the individual in maintaining employment; and

(4) ~~Solution of the problem~~ The problem interfering with the individual maintaining employment does not require a complex or comprehensive rehabilitation effort, ~~i.e. that is,~~ a new and distinct handicapping disabling condition has not occurred ~~which should be handled as a new case that requires a new application.~~

If needed services exceed any of the ~~mentioned~~ conditions in subdivisions 13 b (1) through 13 b (4) of this section, the department may take a new application.

14. Supported employment services, ~~in accordance with the definition of that term as defined in 22VAC30-20-10, to any individual with a most significant disability who:~~

a. An individual with a most significant disability shall be eligible for supported employment services if he meets all of the following criteria:

~~a.~~ (1) Has not worked, or has worked only intermittently, in competitive employment;

~~b.~~ (2) Has been determined on the basis of any evaluation of rehabilitation and career needs, including a consideration of whether supported employment is a possible vocational outcome, to meet the eligibility criteria ~~for the State Vocational Rehabilitation Services~~

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~~Program as established in federal regulations, 22VAC30-20-40; and~~

~~e. (3) Has a need for ongoing support services in order to perform competitive work.~~

~~b. The following activities ~~are~~ shall be authorized under ~~this the supported employment~~ program:~~

~~a. (1) Evaluation of rehabilitation and career needs of individuals with the most ~~severe~~ significant disabilities in terms of a supported employment outcome;:~~

~~b. (2) Development of and placement in jobs for individuals with the most ~~severe~~ significant disabilities; and~~

~~e. (3) Provision of time-limited services needed to support individuals with the most ~~severe~~ significant disabilities in employment, including:~~

~~(1) (a) Intensive on-the-job skills training provided by skilled job trainers, coworkers, and other qualified individuals;:~~

~~(2) (b) Ongoing support services needed to support and maintain an individual's supported employment placement. ~~These must that shall~~ include, at a minimum, twice monthly monitoring to assess the individual's employment stability. ~~Monitoring activities generally take place at the work site unless the individualized plan for employment provides for off site monitoring. If off site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month;:~~~~

~~(3) ~~Follow up~~ (c) Extended services designed to reinforce and stabilize the job placement; and~~

~~(4) (d) Discrete post-employment services unavailable from the extended services provider that are necessary to maintain the job placement, including but not limited to job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.~~

~~d. c. Transitional employment services for individuals with chronic mental illness may be provided under the ~~State Supported Employment Program~~ supported employment program. Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services. Ongoing support services ~~must shall~~ include continuing sequential job placements until job permanency is achieved.~~

~~e. d. The ~~agency~~ department shall provide for the transition of an individual with the most ~~severe~~ significant disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period to achieve job stabilization has been established in the individualized plan for employment; before an individual with a most significant~~

disability makes the transition to extended services as defined in 22VAC30-20-10.

15. Occupational licenses, tools, equipment, initial stocks (including livestock), and supplies.

a. Licenses. Licenses required for entrance into selected vocations may be provided. These may be occupational or business licenses as required by the local governing body, state board examinations required by the Department of Professional and Occupational Regulation, and motor vehicle operator's license.

b. Tools and equipment. Tools and equipment shall be provided for an individual when:

(1) They are required for a job or occupation that is best suited to the utilization of ~~their~~ the individual's abilities and skills;

(2) The employer does not ordinarily furnish these articles; and

(3) They are for the exclusive use of the individual.

Such articles shall be for the individual's own use in the performance of his work and must remain in his possession and under his control as long as he engages in the job or occupation for which they are provided.

If the individual alleges that tools and equipment are stolen, the individual shall file a stolen property report with the local police.

Computer equipment and software shall be provided ~~either~~ if required as indicated in ~~subdivision~~ subdivisions 15 b (1), 15 b (2), and 15 b (3) of this ~~subsection~~ section, or if it is necessary for vocational training. ~~The department's financial participation in the cost of such equipment and software shall not exceed \$3,500.~~

c. Title retention and release. The department shall comply with state ~~law~~ laws and regulations on the retention of title and release of title of equipment to individuals.

d. Repossession of tools and equipment. The department shall repossess all occupational tools and equipment to which the department retains title when they are no longer being used for the purposes intended by the individual for whom they were purchased.

16. Transition services, in accordance with the definition of that term in 22VAC30-20-10.

17. Personal assistance services, in accordance with the definition of that term in 22VAC30-20-10.

18. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome. These include, but are not limited to, such services as: peer counseling, independent living skills training, attendant care, and attendant training ~~if they can reasonably be expected to benefit an individual in terms of employability.~~

~~The department's financial participation in the cost of certain goods and services shall be limited as follows: home modifications, \$7,500; and vehicle modifications, \$7,500. The department shall not purchase or participate in the purchase of automotive vehicles.~~

19. Services to groups. The department may provide vocational rehabilitation services to groups of individuals with disabilities when the services may contribute substantially to the needs of the group; ~~although they the services~~ are not related directly to the individualized employment plan of any one person with a disability.

22VAC30-20-130. Individuals determined to have achieved an employment outcome.

An individual is determined to have achieved an employment outcome only if all of the following requirements ~~have been~~ are met:

1. The ~~provisions~~ provision of services under the individual's individualized plan for employment has contributed to the achievement of an employment outcome;
2. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
3. The employment outcome is in an integrated setting;
4. The individual has maintained the employment outcome for a period of at least 90 days; and
5. At the end of the ~~appropriate~~ applicable period under this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

22VAC30-20-140. Authorization of services.

Written authorization for services shall be made, either before or at the same time as the purchase of services. When an oral authorization is given in an emergency situation, there shall be prompt documentation and the authorization shall be confirmed in writing and forwarded to the provider of the services.

22VAC30-20-150. Written standards for facilities and providers of services.

The ~~designated state unit~~ department shall establish, maintain, make available to the public, and implement written minimum standards for the various types of facilities and providers of services used by the ~~state unit~~ department in providing vocational rehabilitation services, in accordance with the following requirements:

1. Accessibility of facilities. Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, and § 504 of the ~~Rehabilitation Act of 1973 Act~~, as

amended, and regulations implementing these laws. (~~34 CFR 361.51~~)

2. Personnel standards.

a. Qualified personnel. Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or state approved or recognized certification, licensing, or registration requirements or, in the absence of these requirements, other comparable requirements (including state personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

b. Affirmative action. Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

c. Special communication needs personnel. Providers of vocational rehabilitation services shall include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and ensure that appropriate modes of communication for all applicants and eligible individuals are used.

3. Fraud, waste, and abuse. Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

22VAC30-20-160. Participation of individuals in the cost of services based on financial need.

A. A financial ~~need~~ needs test is established because of the limited resources of the department.

B. A financial ~~need~~ needs test shall be utilized to determine the extent of participation by eligible individuals or individuals receiving services during an extended evaluation in the cost of vocational rehabilitation services.

1. The ~~state unit~~ department shall maintain written policies covering the determination of financial need.

2. The state plan must specify the types of vocational rehabilitation services for which the ~~unit~~ department has established a financial needs test. No financial needs test shall be applied and no financial participation shall be required as a condition for furnishing the following vocational rehabilitation services; assessment for determining eligibility and priority for services, except those nonassessment services that are provided during an extended evaluation for an individual with a significant disability; assessment for determining vocational rehabilitation needs; counseling, guidance, and referral services; interpreter and reader services; personal assistance services; placement services; on-the-job training; and unpaid work experience. Also excluded from financial participation shall be services necessary to assist in the diagnostic and evaluation process, such as

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transportation, maintenance, and interpreter service for the deaf. Services ~~which that~~ require ~~an economic need a~~ financial needs test are: physical and mental restoration; training other than on-the-job training (~~OJT~~); maintenance; transportation; services to family members; telecommunications; recruitment and training services; post-employment [services]; occupational licenses and other goods and services.

3. The policies ~~must shall~~ be applied uniformly to all individuals in similar circumstances; the policies may require different levels of need for different geographic regions in the state, but ~~must shall~~ be applied uniformly to all individuals within each geographic region; and the policies ~~must shall~~ ensure that the level of an individual's participation in the cost of vocational rehabilitation services is reasonable based on the individual's financial need, including consideration of any disability-related expenses paid by the individual, and not so high as to effectively deny the individual a necessary service.

C. Groups exempt from a financial needs test are:

1. Recipients of General Relief;
2. Recipients of Temporary Assistance for Needy Families (TANF) by the individual or family on which the individual is dependent; and
3. Individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

D. Income and resources of the family are to be used when the client is a part of the family unit. ~~The client is a part of the parent or legal guardian family unit upon occurrence of either:~~ 1. Dependency of support evidenced on the last federal income tax return of the parent or legal guardian regardless of residency; or 2. When temporarily absent from the home due to illness, school, vacation, or military leave. The family unit is every person listed on the client's most recent federal income tax return.

E. The financial ~~need~~ needs test shall consider the following income:

1. Annual taxable income (gross income).
2. Annual nontaxable income such as social security benefits, retirement benefits, workers' compensation, and veterans' benefits.
3. Total cash assets, including checking and savings accounts, certificates, stocks, and bonds.

F. The financial need test shall provide for the following allowances and exclusions:

1. The gross income shall be adjusted ~~by the~~ for annual taxes, health insurance, and retirement savings by the applicable percentage indicated in the table below:

Gross Income	Allowance
Under \$10,000	15%

\$10,000 to \$14,999	20%
\$15,000 to \$24,999	25%
\$25,000 to \$34,999	30%
Over \$34,999	35%

2. Income shall be excluded from consideration based upon family size using the ~~table below:~~

Size of Family	Income Exclusion
1	\$10,608
2	\$13,143
3	\$15,678
4	\$18,213
5	\$20,748
6	\$23,283
7	\$25,818
8	\$28,353

~~For each additional dependent, add \$2,535. The table above is based upon the federal law income for a family of four. It shall be updated annually by the department.~~ federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 USC § 9902(2). The department shall use the federal poverty level for a family of four to determine the income exclusion for a family of one. The family income exclusion shall be increased by the amount established in the annual federal poverty guidelines for each additional dependent.

3. Excluded from income shall be estimated ~~client~~ cost specifically related to the ~~client's disability and disabilities~~ of family unit members not covered by comparable services and benefits.

4. Excluded from cash assets is \$5,000.

5. Individual retirement accounts shall be excluded from income considerations.

G. Determination of the annual client financial contribution results from an examination of: (i) the number of persons in the family unit; (ii) annual taxable income minus allowances; (iii) annual nontaxable income; (iv) cash assets minus exclusions; and (v) exceptional exclusions based on client cost specifically related to client's disability.

The financial resources to be considered shall be tabulated using the method noted ~~herein~~ in this section. The positive balance (resources exceeding exclusions) shall be determined to be available for participation in the rehabilitation program.

22VAC30-20-170. Availability of comparable services and benefits.

A. Prior to providing any vocational rehabilitation services to an eligible individual or to members of the individual's family, except those services listed in subsection D of this section, the ~~state unit~~ department shall determine whether comparable services and benefits as defined in 22VAC30-20-10 exist under any other program and whether those services and benefits are available to the individual.

B. If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's individualized plan for employment, the ~~state unit~~ department shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

C. If comparable services or benefits exist under any other program but are not available to the individual at the time needed to ~~achieve~~ ensure the ~~rehabilitation objectives~~ progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the ~~state unit~~ department shall provide vocational rehabilitation services until those comparable services and benefits become available.

D. The following services ~~are~~ shall be exempt from a determination of the availability of comparable services and benefits under subsection A of this section: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling, guidance, and referral services; job-related services, including job search and placement services; job retention services; follow-up services; rehabilitation technology; and post-employment services consisting of those services listed in this subsection.

E. The requirements of subsection A of this section also ~~do~~ shall not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

22VAC30-20-181. Review of ~~rehabilitation counselor or coordinator~~ determinations made by the department.

A. The designated ~~state unit~~ must establish and implement ~~procedures, including standards of review under subsection D of this section, established by the Commissioner of the Department for Aging and Rehabilitative Services to ensure that any~~ An applicant, ~~or~~ or eligible individual, ~~or, if appropriate, individual's representative~~ who is dissatisfied with any ~~determinations~~ determination made by a ~~rehabilitation counselor or coordinator concerning the furnishing or denial of~~ department personnel that affects the

~~provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of those determinations~~ the determination. ~~The procedures established by the Commissioner of the Department for Aging and Rehabilitative Services must be in accordance with this section.~~

B. Informal dispute resolution. ~~The Department for Aging and Rehabilitative Services may establish an informal process to resolve a request for review without conducting mediation or a formal hearing. However, the~~

1. A request for review shall be made within 60 days after the determination. The applicant, eligible individual, or, if appropriate, the individual's representative may request a meeting with the supervisor of the staff member who made the determination and request an informal administrative review conducted by the supervisor.

2. Within 10 working days of the request, the supervisor shall send a written decision and grounds to the applicant or eligible individual, with a copy to the individual's representative, if applicable, and it shall become part of the case record.

3. The informal dispute resolution process ~~must~~ shall not be used to deny or delay the right of an applicant or eligible individual to proceed directly to a hearing under subsection D of this section or mediation under subsection C of this section. The informal resolution or the mediation process or both must be conducted and concluded within the time period established under subdivision D 1 of this section for holding a formal hearing. If neither the informal resolution nor mediation is successful, a formal hearing must be conducted by the end of this same period, unless the parties agree to a specific extension of time.

C. Mediation.

1. The department shall establish mediation procedures that allow an applicant or eligible individual and the state unit to resolve disputes. The procedures shall provide that:

1. The mediation process is conducted by a qualified and impartial mediator as defined in 22VAC30-20-10 who must be selected from a list of qualified and impartial mediators maintained by the state;

2. Mediation be available, at a minimum, whenever an applicant, eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section;

3. Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the state unit;

4. The mediation process not be used to deny or delay the applicant or eligible individual's right to pursue resolution of the dispute through a formal hearing process in the time specified in subsection D of this section or any other rights provided under this part;

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~~5. Either party or the mediator may elect to terminate mediation at any time and pursue resolution through a formal hearing if desired;~~

~~6. Mediation sessions are scheduled and conducted in a timely manner and held in a location and manner convenient to the parties in dispute;~~

~~7. Discussions that occur during mediation remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and parties may be required to sign a confidentiality pledge prior to mediation;~~

~~8. Any agreement reached by the parties to the dispute will be described in a written mediation agreement that is developed by the parties with the assistance of the mediator, signed by both parties, with a copy given to both parties; and~~

~~9. The cost of the mediation process will be paid by the state, but the state is not required to pay for any costs related to the representation of an applicant or eligible individual.~~

a mediation process conducted by a qualified and impartial mediator as defined in 22VAC30-20-10, who shall be selected from a list of qualified and impartial mediators maintained by the department. Mediation shall be requested within 60 days after a determination or informal administrative review decision. The department shall include in the mediation process the guardian of an applicant or eligible individual who has been judged incompetent. Participation in the mediation process is voluntary on the part of the applicant or eligible individual and on the part of the department. Mediation may be requested while a hearing is pending but shall not be used to deny or delay the applicant or eligible individual's right to a hearing conducted and concluded within the time period established under subdivision D 1 of this section.

2. The mediator shall schedule and conduct the mediation sessions in a timely manner and in a location convenient to the parties in dispute. The mediator shall afford both parties an opportunity to be represented by counsel or other advocate and to submit evidence or other information. Discussions that occur during mediation remain confidential and shall not be used as evidence in any subsequent hearing or civil proceeding, and parties shall be required to sign a confidentiality pledge prior to mediation. Either party or the mediator may terminate mediation at any time, and the applicant, eligible individual, or the department may seek resolution through a hearing.

3. Any agreement reached by the parties in a mediation shall be described in a written mediation agreement. Both parties to the dispute shall have an opportunity to review the agreement with their representative, supervisor, or legal advisor before signing it. An agreement signed by both parties shall become part of the case record, with a copy

given to the applicant or eligible individual and any representative.

4. The cost of the mediation process shall be paid by the department, but the department is not required to pay for any costs related to the representation of an applicant or eligible individual.

D. The department shall establish formal review procedures that provide that: Due process hearing.

1. A The applicant, eligible individual, or, if appropriate, individual's representative may request a hearing within 60 days after the determination to be reviewed, meeting or informal administrative review decision under subsection B of this section, or mediation refusal or mediation termination date. Department personnel may request a hearing within 60 days after termination of the mediation process under subsection C of this section.

a. The hearing shall be scheduled and conducted by an a qualified and impartial hearing officer, as defined and selected in accordance with subsection E of this section, must be held according to subdivision 2 of this subsection.

b. The hearing officer shall conduct the hearing within 60 days of the department receiving an individual's request for review, unless informal resolution is achieved prior to before the 60th day, or the parties agree to a specific extension of time; 2. The department may not institute a suspension, reduction, or termination of services being provided under an individualized plan for employment pending a final determination of the formal hearing under this subdivision, informal resolution under subsection B of this section, or mediation under subsection C of this section unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative; 3. The individual or, if appropriate, the individual's representative must be afforded, or the hearing officer grants a postponement request for good cause that would result in a fair representation of the issues.

c. The hearing officer shall provide both parties to the dispute an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer; to be represented by counsel or other appropriate advocate; and to examine all witnesses and other relevant sources of information, and evidence; 4. The impartial. All testimony shall be given under oath. Hearsay testimony and redundant evidence may be admitted at the discretion of the hearing officer. Because the hearing officer cannot issue subpoenas, the department shall be responsible for the appearance of current department personnel on the witness list of either party.

d. Within 30 days after the hearing, the hearing officer shall ~~make~~ issue a written decision with a full report of the findings and grounds for the decision to the applicant, eligible individual, individual's representative, and the department. The decision shall be based on the provisions of the approved state plan, the federal Rehabilitation Act of 1973 as amended (the Act), federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements ~~and shall provide to the individual or, if appropriate, the individual's representative and to the commissioner a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;~~ 5. The hearing officer's decision is ~~shall be~~ final, except that a party may request an impartial administrative review under subdivision 6 of this subsection if the state has established procedures for review, and a party ~~involved in a hearing~~ may bring a civil action under subsection ~~H~~ G of this section;

6. The state may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision consistent with 34 CFR 361.57;

7. Except for the time limitations established in subdivision 4 of this subsection, each state's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

E. Selection of impartial hearing officers.

2. The ~~impartial~~ hearing officer for a particular case ~~must~~ shall be selected ~~(i)~~ randomly by the department from among the pool of persons qualified to be an impartial hearing officer, as defined in 34 CFR 361.5(b)(22) and 29 USC § 722(b) and (d), who are identified jointly by the ~~Department for Aging and Rehabilitative Services commissioner~~ and those members of the State Rehabilitation Council designated in § 102(d)(2)(C) of the Act (29 USC § 722(b) and (d)) ~~and (ii) on a random basis.~~

E. Administrative review of hearing officer decision.

1. If the state has established procedures for an administrative review, the request and statutory, regulatory, or policy grounds for the request shall be made in writing to the department within 20 days of the hearing decision date. The review shall be a paper review of the entire hearing record and shall be conducted by a designee of the [governor's Governor's] office who shall not delegate the review to any personnel of the department.

2. The reviewing official shall provide both parties an opportunity to submit additional written evidence and information relevant to the final decision concerning the matter under review. The reviewing official may not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual, unless the reviewing

official concludes, based on clear and convincing evidence, that the hearing officer's decision is clearly erroneous on the basis of being contrary to the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements.

3. Within 30 days after the request, the reviewing official shall issue an independent decision and full report of the findings and the statutory, regulatory, or policy grounds for the decision to the applicant, eligible individual, individual's representative, and department. The decision of the reviewing official is final and shall be implemented pending review by the court if either party chooses under subsection G of this section to bring a civil action regarding the matter in dispute.

F. Informing affected individuals. The department shall inform, through appropriate modes of communication, all applicants and eligible individuals of: 1. Their right to review under this section their right to request a review of a determination made by department personnel that affects provision of vocational rehabilitation services, including the names and addresses of individuals with whom appeals mediation and hearing requests may be filed and how the mediator and hearing officer shall be selected; and their right to proceed directly to a hearing; their right to an informal administrative review; their right to pursue mediation; and their right to contact the Client Assistance Program to assist during mediation and hearing processes. Notification shall be provided in writing at the time of application for vocational rehabilitation services; assignment to a priority category if the department is operating under an order of selection; individualized plan for employment development; and reduction, suspension, or termination of services.

2. The manner in which an impartial hearing officer will be selected consistent with the requirements of subsection E of this section.

G. Implementation of final decisions. If a party brings a civil action under subsection H of this section to challenge the final decision of a hearing officer under subsection D of this section or to challenge the final decision of a state reviewing official under subsection D of this section, the final decision of the hearing officer or state reviewing official must be implemented pending review by the court.

H. G. Civil action. Any party who disagrees with the findings or ~~decisions~~ decision of an impartial hearing officer under subdivision D 4 of this section if the state that has not established ~~administrative review procedures under subdivision D 6 of this section, and any party who disagrees with the findings and decision under subdivision D 6 of this section, if the state has established an administrative review procedure, has a subsection D of this section or an administrative review under subsection E of this section shall~~ have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of

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competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this ~~section subsection~~, the court receives the records related to the impartial due process hearing and the records related to the administrative review, if applicable; hears additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

A. For two years after ~~the an~~ individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative), the ~~state unit department~~ shall annually review and reevaluate the status of each individual determined by the ~~state unit department~~ to have achieved an employment outcome in which the individual is compensated in accordance with § 14(c) of the Fair Labor Standards Act or whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with 22VAC30-20-10 or ~~that~~ the individual made an informed choice to remain in extended employment. ~~This~~ The annual review or and reevaluation must shall include input from the individual or, ~~in an appropriate case if appropriate~~, the individual's representative to determine the interests, priorities, and needs of the individual with respect to competitive employment.

B. The ~~state unit department~~ shall make maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to engage in competitive employment.

C. The ~~state unit department~~ shall obtain the ~~individual's signed acknowledgment of the individual~~, or, as appropriate, the individual's ~~representative's signed acknowledgement representative~~, that the annual review and reevaluations have been conducted.

VA.R. Doc. No. R13-3609; Filed December 16, 2016, 4:10 p.m.

Emergency Regulation

Title of Regulation: 22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-10, 22VAC30-80-20, 22VAC30-80-30, 22VAC30-80-45 through 22VAC30-80-70; adding 22VAC30-80-35).

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Effective Dates: January 9, 2017, through July 8, 2018.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

Preamble:

The second enactment of Chapter 567 of the 2016 Acts of Assembly directed the Commissioner of the Department for Aging and Rehabilitative Services to promulgate regulations for the provision of supportive housing for individuals receiving auxiliary grants within 180 days. Therefore, emergency regulations are needed to meet this requirement.

Currently, the Auxiliary Grants Program regulations address standards for the two settings, assisted living facility (ALF) and adult foster care home (AFC), in which an individual has traditionally received the auxiliary grant. The intent of this emergency action is to (i) add supportive housing, which is a new living arrangement that individuals who receive auxiliary grant payments may choose, as a third setting in which individuals may receive the auxiliary grant, (ii) define requirements to participate in the supportive housing setting, (iii) clarify providers' responsibilities for each setting, and (iv) update terminology and guidelines for the Auxiliary Grant Program. As ALF and AFC placements are limited, amending the auxiliary grant regulations to allow supportive housing settings will assist individuals who may be unable to locate an ALF or AFC placement to meet their needs. Adding supportive housing as an approved setting for the auxiliary grant will protect the health, safety, and welfare of individuals who choose this living arrangement by ensuring that they will receive safe, high quality support to meet their daily living needs.

22VAC30-80-10. Definitions.

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

"Adult foster care" or "AFC" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. 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" or "ALF" 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 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 individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

"Auxiliary Grants Program" or "AG" means a state and locally funded assistance program to supplement income of an individual receiving Supplemental Security Income (SSI) or adult who would be eligible for SSI except for excess income, who resides in an ALF ~~or in, an AFC,~~ or a supportive housing setting with an established rate. The total number of individuals within the Commonwealth of Virginia eligible to receive AG in a supportive housing setting shall not exceed the number designated in the signed agreement between the department and the Social Security Administration.

"Certification" means a form provided by the department and prepared by ~~the an ALF or a supportive housing provider.~~ Each ALF shall annually certifying certify that the ALF it has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations. Each supportive housing provider shall annually certify that it is in compliance with the regulations for the administration of the auxiliary grants programs (22VAC30-80).

"Department" means the Department for Aging and Rehabilitative Services.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"Established rate" means the rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

"Personal needs allowance" means an amount of money reserved for meeting the adult's personal needs when computing the amount of the AG payment.

"Personal representative" means the person representing or standing in the place of the individual for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next-of-kin, descendant, trustee, or other person expressly named by the individual as his agent.

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Program" means the Auxiliary Grant Program.

"Provider" means an ALF that is licensed by the Department of Social Services or an AFC provider that is approved by a local department of social services or a supportive housing provider as defined in § 37.2-421.1 of the Code of Virginia.

"Provider agreement" means a ~~document~~ written agreement that the ALF ALFs and supportive housing providers must complete and submit to the department when requesting to be approved for admitting approval to admit individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC30-110 to perform an assessment, reassessment, or change in level of care for an individual applying for AG or residing in an ALF or a supportive housing setting. For individuals receiving services from a community services board or behavioral health authority, a qualified assessor is an employee or designee of the community services board or behavioral health authority.

"Rate" means the established rate.

"Residential living care" means a level of service provided by an ALF 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 (UAI).

"Supportive housing" or "SH" means a residential setting with access to supportive services for an AG recipient in which tenancy as described in § 37.2-421.1 of the Code of Virginia is provided or facilitated by a provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services that has entered into an agreement with the DBHDS pursuant to § 37.2-421.1 of the Code of Virginia.

"Uniform Assessment Instrument" or "UAI" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

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22VAC30-80-20. Assessment.

A. In order to receive payment from the program for care in an ALF or in AFC, an individual applying for AG shall have been assessed by a qualified assessor using the UAI and determined to need residential or assisted living care or AFC.

B. As a condition of eligibility for the program, a UAI shall be completed on an individual prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker, at least once annually, and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ALF or AFC.

C. The ALF or AFC provider is prohibited from charging a security deposit or any other form of compensation for providing a room and services to the individual. The collection or receipt of money, gift, donation or other consideration from or on behalf of an individual for any services provided is prohibited.

D. In order to receive payment from the AG program for care in the SH setting, an individual shall be evaluated by a qualified assessor in accordance with § 51.5-160 E of the Code of Virginia. Eligible individuals shall be notified of the SH setting option and the availability of approved SH providers at the time of their annual level of care assessment.

22VAC30-80-30. Basic services in an assisted living facility or an adult foster care home.

A. The rate established under the program for the ALF setting shall cover the following services:

1. Room and board.
 - a. Provision of a furnished room;
 - b. Housekeeping services based on the needs of the individual;
 - c. Meals and snacks provided in accordance with 22VAC40-72 including, but not limited to food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for an individual by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all individuals desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the individual's physician, the daily menu, including snacks, for each individual shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge.

At least one meal each day shall include a hot main dish; and

d. Clean bed linens and towels as needed by the individual and at least once a week.

2. Maintenance and care.

a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;

b. Medication administration as required by licensing regulations including insulin injections;

c. Provision of personal toiletries including toilet paper;

d. Minimal assistance with the following:

(1) Care of personal possessions;

(2) Care of personal funds if requested by the individual and provider policy allows this practice, and in compliance with 22VAC40-72-140 and 22VAC40-72-150, Standards for Licensed Assisted Living Facilities;

(3) Use of the telephone;

(4) Arranging transportation;

(5) Obtaining necessary personal items and clothing;

(6) Making and keeping appointments; and

(7) Correspondence;

e. Securing health care and transportation when needed for medical treatment;

f. Providing social and recreational activities; and

g. General supervision for safety.

B. The AFC provider shall adhere to the standards in 22VAC30-120-40.

22VAC30-80-35. Basic services in supportive housing settings.

A. The rate established under the program for SH, as defined in 22VAC30-80-10, shall cover a residential setting with access to SH services that include:

1. Development of individualized SH service plans;

2. Access to skills training;

3. Assistance with accessing available community-based services and supports;

4. Initial identification and ongoing review of the level of care needs; and

5. Ongoing monitoring of services described in the individual's individualized SH plan.

B. The residential setting covered under the program for SH, as defined in 22VAC30-80-10, shall be the least restrictive and most integrated setting practicable for the individual and shall:

1. Comply with federal habitability standards;

- 2. Provide cooking and bathroom facilities in each unit;
- 3. Afford dignity and privacy to the individual; and
- 4. Include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia).

22VAC30-80-45. Conditions of participation in the program.

A. Provider agreement for ALF.

- 1. As a condition of participation in the program, the ALF provider is required to complete and submit to the department a signed provider agreement as stipulated ~~below in this section~~. The agreement is to be submitted prior to the ALF accepting AG payment for qualified individuals. A copy of the ALF's current license must be submitted with the provider agreement.
- 2. The ALF provider shall agree to the following conditions in the provider agreement to participate in the program:
 - a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;
 - b. Submit an annual certification form by October 1 of each year;
 - c. Care for individuals with AG in accordance with the requirements herein at the current established rate;
 - d. Refrain from charging the individual, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;
 - e. Accept the established rate as payment in full for services rendered;
 - f. Account for the personal needs allowances in a separate bank account and apart from other facility funds and issue a monthly statement to each individual regarding his account balance;
 - g. Provide a 60-day written notice to the regional licensing office in the event of the facility's closure or ownership change;
 - h. Provide written notification of the date and place of an individual's discharge or the date of an individual's death to the local department of social services determining the individual's AG eligibility and to the qualified assessor within 10 days of the individual's discharge or death; and
 - i. Return to the local department of social services determining the individual's AG eligibility, all AG funds received after the death or discharge date of an individual in the facility.

B. As a condition of participation in the program, the AFC provider shall be approved by a local department of social services and comply with the requirements set forth in 22VAC30-120.

C. Provider agreement for SH. As a condition of participating in the AG program, the SH provider shall enter an agreement with DBHDS pursuant to § 37.2-421.1 of the Code of Virginia. The SH provider shall submit a copy of the executed agreement and a copy of its current DBHDS license prior to the SH provider receiving payments from the AG program on behalf of qualified individuals. The SH provider shall provide SH services for each individual in accordance with § 37.2-421.1 of the Code of Virginia and all other applicable laws, regulations, and policies and procedures.

22VAC30-80-50. Establishment of rate.

The established rate for individuals authorized to reside in an ALF ~~or in~~, an AFC, or a supportive housing setting is the established rate as set forth in the appropriation act or as set forth by changes in the federal maintenance of effort formula. The AG payment is determined by adding the rate plus the personal needs allowance minus the individual's countable income. The effective date is the date of the individual's approval for AG by the local department of social services.

22VAC30-80-60. Reimbursement.

A. Any moneys contributed toward the cost of ~~care~~ basic services as defined in 22VAC30-80-30 and 22VAC30-80-35 pending AG eligibility determination shall be reimbursed to the individual or contributing party by the ALF ~~or~~, AFC, or SH provider once eligibility for AG is established and that payment received. The payment shall be made payable to the individual, who will then reimburse the ~~provider for care~~ appropriate providers for basic services. If the individual is not capable of managing his finances, his personal representative is responsible for reimbursing the provider.

B. In the event an ALF is closed, the facility shall prorate the rate up to the date of the individual's discharge and return the balance to the local department of social services that determined the individual's eligibility for the grant. If the facility maintained the individual's personal needs allowance, the facility shall provide a final accounting of the individual's personal needs allowance account within 60 days of the individual's discharge. Verification of the accounting and of the reimbursement to the individual shall be mailed to the case management agency responsible for the individual's annual reassessment. In the event of the individual's death, the provider shall give to the individual's personal representative a final accounting of the individual's funds within 60 calendar days of the event. All AG funds received after the death or discharge date shall be returned to the local department of social services responsible for determining the individual's AG eligibility as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.

22VAC30-80-70. Certification.

A. ~~ALFs~~ ALF and SH providers shall submit to the department an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: identifying information about the ~~ALF~~

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provider, census information including a list of individuals who resided in the facility or SH setting and received AG during the reporting period and personal needs allowance accounting information if such personal needs accounting information is required by the setting. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.

B. All information reported by an ALF or SH provider on the certification form shall be subject to audit by the department. Financial information that is not reconcilable to the provider's general ledger or similar records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

C. All records maintained by an AFC provider, as required by 22VAC30-120, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

VA.R. Doc. No. R17-4816; Filed December 16, 2016, 4:22 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: 23VAC10-220. Aircraft Sales and Use Tax (amending 23VAC10-220-5, 23VAC10-220-10, 23VAC10-220-20).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 10, 2017.

Effective Date: March 27, 2017.

Agency Contact: 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.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. The Aircraft Sales and Use Tax is administered by the Department of Taxation pursuant to § 58.1-1503 of the Code of Virginia.

Purpose: This regulatory action is needed to remove references to a previous retail sales and use tax rate that provide no guidance regarding the aircraft sales and use tax.

The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the aircraft sales and use tax. Removal of the retail sales and use tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the rate in the event that it is changed again. The action does not have an impact on the health, safety, and welfare of the public.

Rationale for Using Fast-Track Rulemaking Process: Amending the Aircraft Sales and Use Tax regulation to repeal references to a previous retail sales and use tax rate that provide no guidance regarding the aircraft sales and use tax is expected to be noncontroversial and appropriate for the fast-track rulemaking process.

Substance: This action will amend 23VAC10-220-5, 23VAC10-220-10, and 23VAC10-220-20 to remove references to the previous rate of the retail sales and use tax.

The rate of the retail sales and use tax has been increased twice since the rate listed in the regulation, 4.0%, was in effect. The retail sales and use tax rate is currently 5.3% statewide, with an additional 0.7% state tax in the Northern Virginia and Hampton Roads Regions. Removal of the retail sales and use tax rate from the Aircraft Sales and Use Tax regulation will have no impact on the usefulness of the regulation. The listing of the retail sales and use tax rate provides no guidance regarding the aircraft sales and use tax. The retail sales and use tax rate is not necessary for any examples or explanation provided in the regulation. Removal of the retail sales and use tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the regulation in the event that it is changed in the future.

The aircraft sales and use tax is generally imposed at the rate of 2.0% on the retail sale of every aircraft sold in Virginia and upon the use in Virginia of any aircraft required to be licensed by the Department of Aviation. However, commercial dealers may elect to pay the aircraft sales and use tax at the rate of 2.0% of the monthly gross receipts from the lease, charter, or other use of any aircraft licensed for commercial use instead. Revenues from the tax are deposited into a special fund within the Commonwealth Transportation Fund for the administration of aviation laws by the Department of Aviation; for the construction, maintenance, and improvement of airports and landing fields; and for the promotion of aviation.

The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the aircraft sales and use tax.

Issues: The primary advantage of this action for the public and the agency is that it will remove an incorrect listing of the retail sales and use tax rate that may cause confusion. As this regulatory action will repeal references to a former retail sales and use tax rate that provide no guidance regarding the aircraft sales and use tax, there are no issues or disadvantages

to the public or the Commonwealth associated with this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to amend its regulation for the Aircraft Sales and Use Tax to make clarifying changes and to remove references to a now obsolete retail sales and use tax rate.

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

Estimated Economic Impact. The Department proposes several changes to this regulation that do not change current rules or practice. For instance, the Department proposes to reword the preface to the definition section of the regulation to make it more easily understandable. Changes such as these do not impose any costs on any affected entity but provide the benefit of additional clarity to interested parties reading the regulation.

Currently, this regulation states that the retail sales and use tax for aircraft is four percent. Department staff report, however, that this tax rate has increased twice in statute since it was listed in this regulation. The tax as mandated by the General Assembly is currently five and three tenths percent state wide with an additional seven tenths percent tax in the Northern Virginia and Hampton Roads regions. Because the tax rate listed in this regulation is obsolete, the Department proposes to remove it. No entity will incur any costs on account of this change. Removing this obsolete language will benefit interested parties by ensuring that the regulation does not cause confusion by representing that the tax rate is lower than it actually is.

Businesses and Entities Affected. These proposed regulatory changes will affect all entities who are subject to the Aircraft Sales and Use Tax. The Department reports that 228 entities paid this tax in fiscal year 2014, 226 paid it in fiscal year 2015 and 278 paid it in fiscal year 2016.

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

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

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. No small businesses will be adversely affected by these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses will be adversely affected by these proposed regulatory changes.

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.

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

Summary:

The amendments amend the aircraft sales and use tax provisions by removing outdated references to the rate of the retail sales and use tax.

23VAC10-220-5. Definitions.

The following words, terms and phrases are defined herein for the tax imposed by Chapter 15 of Title 58.1-1501 of the Code of Virginia only and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Aircraft" means any contrivance used or designed for and capable of untethered navigation or flight in the air carrying one or more persons at an altitude greater than ~~twenty-four~~ 24 inches above the ground, except such term shall not include a parachute or a "hang glider." (See § 5.1-1 of the Code of Virginia.)

"Commissioner" means the Tax Commissioner.

"Dealer" means any person the Tax Commissioner finds to be in the regular business of selling aircraft and who owns five or more aircraft at anytime during the calendar year ~~which that~~ are held for resale or used for compensation. ~~For purposes of this chapter, the~~ The term "owns" includes aircraft acquired under leases qualifying as sales as defined in this section.

"Gross receipts" means hourly rental, maintenance, and all other charges for use of such aircraft. Also, unless separately stated on the invoice, "gross receipts" includes all charges for services of pilots or instructors in such aircraft.

"Person" means every natural person, firm, partnership, association, corporation, or other entity.

"Sale" means any transfer of ownership or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of an

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aircraft, including transactions whereby possession is transferred but title is retained by the seller as security. ~~For purposes of this chapter, the~~ The term "lease or rental" shall be restricted to include only a lease or rental for a period of time substantially equal to the remaining life of the aircraft as determined at the beginning of the lease term or a lease or rental in which the payments during the term of the lease will substantially equal the value of the aircraft.

1. The remaining life of the aircraft shall be estimated in accordance with generally accepted accounting principles, considering factors such as physical deterioration, normal obsolescence, maintenance, and intensity of use.

2. ~~For purposes of this chapter, the~~ The term "substantially equal" shall mean "equal to or exceeds ~~eighty percent.~~" 80%."

3. ~~For purposes of this chapter, the~~ The term "value of the aircraft" shall mean the current market value of the aircraft in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of an aircraft.

The same sale will not be subject to the tax more than once. However, unless it is an exempt transfer, each time a transfer of ownership or possession takes place, the new owner will be subject to the tax on the transfer.

~~As used in this chapter, the term "sale"~~ "Sale" does not include the following:

1. Any transfer of ownership or possession which transfer is made to secure payment of an obligation.

2. Any transfer of ownership or possession ~~which that~~ is incidental to repossession under a lien and under which ownership is transferred to the lien holder, his nominee, or a trustee, pending ultimate disposition or sale of the collateral.

3. Any transfer of ownership or possession ~~which that~~ is part of the sale of all or substantially all the assets of a business. The exemption applies only to aircraft upon which Virginia aircraft sales and use tax has been paid upon acquisition or use by the transferor and does not include nonlicensed aircraft held for resale by a dealer or manufacturer or any other aircraft held or used for exempt purposes by the transferor. The tax status of such aircraft will be determined by the transferee's purposes and use of the aircraft. ~~For purposes of this chapter, the~~ The term "substantially all the assets" shall mean ~~"eighty percent~~ "80% or more."

4. Any transfer of ownership or possession by survivorship, inheritance, or gift. The exclusion from "sale" referred to in this ~~paragraph~~ subdivision 4 is limited to bona fide gifts without consideration. A gift for services rendered or any other form of consideration is a sale and is subject to Virginia aircraft sales tax.

5. Any transfer of ownership or possession from an individual or partnership to a corporation or from a

corporation to an individual or partnership if the transfer is incidental to the formation, organization, reorganization, or dissolution of a corporation in which the individual or partnership holds a controlling interest. For purposes of this exclusion, a controlling interest means the ownership of at least ~~eighty percent~~ 80% of all outstanding shares of voting stock.

6. Any transfer of ownership from a partner to the partnership in which he is a partner will be deemed a taxable sale only to the extent of the aggregate interests of partners other than the transferring partner. Similarly, any transfer of ownership from a partnership to a partner will be deemed a taxable sale only to the extent of the aggregate interests of partners other than the transferee partner.

7. Any transfer of ownership or possession between affiliated corporations if Virginia aircraft sales and use tax or Virginia retail sales and use tax was paid on the acquisition or use of the transferred aircraft by the transferring corporation. For purposes of this exclusion, two or more corporations shall be deemed affiliated if (i) one corporation owns at least 80% of the outstanding shares of voting stock of the other or others or (ii) at least 80% of the outstanding shares of voting stock of two or more corporations is owned by the same interests.

Example 1: Corporation A purchased in 1980 an aircraft and paid Virginia aircraft sales and use tax on the purchase. In 1983, Corporation A acquired all of the capital stock of Corporation B and transferred its aircraft to Corporation B. The transfer would not be subject to Virginia aircraft sales and use tax because it would represent a transfer between qualified affiliates (parent owning as least ~~80 percent~~ 80% of subsidiary).

Example 2: Corporation C purchased an aircraft in Delaware in March 1982. In June 1982, Corporation C acquired all of the capital stock of Corporation D, a Virginia corporation, and transferred its aircraft to Corporation D. The acquisition of the aircraft by Corporation D is subject to Virginia aircraft sales and use tax. While this would represent a transfer between qualified affiliates, Virginia aircraft sales and use tax was not paid on the acquisition of the transferred asset by the transferring corporation.

Example 3: Individual A owns ~~100 percent~~ 100% of the voting stock of Corporation E and ~~85 percent~~ 85% of the voting stock of Corporation F. Both corporations operate businesses in Virginia. In 1982, Corporation E transfers to Corporation F an aircraft which it had previously purchased and on ~~which that~~ it had paid aircraft sales and use tax. The transfer would not be subject to Virginia aircraft sales and use tax because it would represent a transfer between qualified affiliates (at least ~~80 percent~~ 80% of the voting stock of each corporation is owned by the same owner) and because Virginia aircraft sales and

use tax was paid on the acquisition of the transferred aircraft by the transferring corporation.

Example 4: Individual A is the sole owner of an aircraft. A transfers the aircraft to Partnership ABC in which he is a partner owning a 1/3 interest in the partnership property. A's 1/3 interest in the aircraft is not subject to tax since A is deemed to have retained 1/3 of his previous 100% ownership on which he had paid aircraft sales and use tax. The 2/3 interest in the aircraft owned by Partners B and C is subject to the aircraft sales and use tax. To the extent of this interest, a transfer qualifying as a sale took place.

Example 5: Partnership XYZ transferred its aircraft ~~which that~~ it had purchased and on which it had paid Virginia aircraft sales and use tax to Partner Z on January 1, 1983. Each partner is deemed to own a 1/3 interest in the aircraft. The taxable portion of the transfer is the 2/3 interest owned by Partners X and Y.

8. Transfer of aircraft repair parts, accessories, attachments, and lubricants, not included in the same transaction with the transfer of aircraft. Sales of all such tangible personal property are subject to the Virginia retail sales and use tax and reportable on Form ST-9, Dealer's Retail Sales and Use Tax Return.

"Retail sale," ~~as used in this chapter, sale~~ means a sale to a consumer or to any person for any purpose other than for resale and includes any transaction the ~~Commissioner~~ commissioner, upon investigation, finds to be in lieu of a sale.

"Retail sale" does not include the mere transfer of titled ownership between husband and wife, where there has been no contractual consideration for the transfer and where no loss resulting from the transfer would constitute an allowable deduction for federal or state income tax purposes. No substantive change in equity ownership has occurred and the transfer is not subject to Virginia aircraft sales and use tax. ~~Likewise, a similar transfer, as described above, to joint ownership with husband and wife would not be subject to tax as a retail sale.~~

"Sale price," ~~as used in this chapter, price~~ means the total price paid for an aircraft and all attachments thereon and accessories thereto, without any allowance or deduction for trade-ins or unpaid liens or encumbrances, but exclusive of any federal manufacturers' excise tax.

"Attachments thereon" and "accessories thereto" as used herein mean all tangible personal property that is physically attached to the aircraft, including installation charges, or property that is customarily used in aircraft, whether or not affixed to the structure of the aircraft, and ~~which that~~ was transferred in the same transaction as the aircraft as a part of the aircraft sale. Such tangible personal property transferred other than in the same transaction with the aircraft will be subject to the ~~four percent~~ Virginia retail sales and use tax imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia.

Charges for lettering and get-ready charges (i.e., cleaning, washing, and preparing) are also included in the sale price when made in the same transaction with the aircraft transfer.

Charges for federal manufacturer's excise tax, insurance, and gasoline are excluded from the sale price, when separately stated on the invoice.

23VAC10-220-10. Tax levied.

A. Generally. The Virginia aircraft sales and use tax is imposed at the rate of ~~two percent~~ 2.0% upon the retail sale of every aircraft sold in ~~this state~~ the Commonwealth and upon the nonexempt use in Virginia of any aircraft.

B. Tax rate application. The tax is to be collected by applying the ~~2%~~ 2.0% rate as follows:

1. Aircraft sold in Virginia. For aircraft sold in Virginia, the amount of tax is ~~two percent~~ 2.0% of the sale price of the aircraft. The tax is levied on the date the application was required to be made to the Department of Aviation to obtain the license to operate the aircraft. See 23VAC10-220-50.

a. The Virginia aircraft sales tax applies to all aircraft sold and required to be licensed in Virginia, including occasional sales. "Occasional sale" ~~refers to~~ means a sale of an aircraft by anyone not a dealer in aircraft. See 23VAC10-220-50 for information concerning payment of tax.

b. No tax is applicable to an aircraft ~~which that~~ is not required to be licensed by the Department of Aviation.

Example 1: Individual A purchased a plane in Virginia on January 1, 1983, and applied for a license to operate the aircraft on the same day. The purchase price of the plane was \$12,000. The tax is levied on the date of purchase and A must pay the Virginia aircraft sales tax of \$240 based upon the sale price.

Example 2: Individual B purchased a plane in Virginia for \$25,000 on January 1, 1982, and stored the plane for use in Virginia while she took flying lessons. B applied to the Department of Aviation for a license to operate the aircraft on September 1, 1982. The tax is levied September 1, 1982, on the original purchase price of \$25,000.

Note: 23VAC10-220-50 requires the aircraft sales and use tax to be paid prior to the time the owner applies to the Department of Aviation for and obtains a license to operate the aircraft. 23VAC10-220-20 requires the tax to be based upon the current market value of the aircraft if first used or stored for use in Virginia six months or more after its acquisition. The current market value is not applicable in the case at hand because the plane qualified as an aircraft when purchased on January 1, 1982, and was first stored for use in this state on that date, even though the aircraft was not required to be licensed until nine months later.

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Example 3: Individual C purchased a plane kit in Virginia on June 1, 1982. The kit is subject to the ~~4.0%~~ retail sales and use tax when purchased since the kit does not meet the definition of an aircraft at the time of purchase. When the kit is assembled, and qualifies as an aircraft, it is subject to the ~~2.0%~~ aircraft sales and use tax on the assembled cost. See 23VAC10-220-30 ~~D~~ C.

2. Aircraft not sold in Virginia. For aircraft not sold in Virginia but required to be licensed for use in Virginia, the amount of tax is ~~two percent~~ 2.0% of the sale price of the aircraft, wherever sold; however, if the aircraft is not sold in Virginia and is first required to be licensed in Virginia six months or more after its acquisition, the tax is imposed at ~~two percent~~ 2.0% of the current market value of the aircraft if such current market value is less than the sale price of the aircraft including the cost of any modifications, improvements, or additions subsequent to initial acquisition. ~~Also, see~~ See 23VAC10-220-20.

a. The term "required to be licensed" as used in this section refers to the licensing provisions of Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia. Section 5.1-5 requires that before operating any aircraft, the owner must obtain from the Department of Aviation an aircraft license for such aircraft.

b. The term "current market value" as used in this section means an average value considering age, make, model, and included accessories in accordance with such publications or other data as are customarily employed in ascertaining the sale price of used aircraft.

c. The same transaction will not be subject to the tax more than once. However, each time a sale takes place, or an aircraft is brought into use in Virginia and required to be licensed, the new owner or new user in Virginia will be subject to the tax on the transaction.

d. The Virginia aircraft sales and use tax is not applicable to the use of any aircraft ~~which that~~ is not required to be licensed by the Department of Aviation.

3. Aircraft leased, rented, or chartered. Dealers in aircraft as defined in 23VAC10-220-5 may elect to license for commercial use one or more aircraft held for lease, rental, charter, or other compensatory use, without payment of the Virginia aircraft sales and use tax based upon the sale price, subject to certain requirements and restrictions as regulated.

Any person who revokes his election immediately becomes liable for the Virginia aircraft sales and use tax as regulated in ~~Paragraph B above~~ subdivisions 1 and 2 of this subsection.

C. Tax levy on lease or rental defined as sale. The Virginia aircraft sales tax is imposed upon the retail sale of an aircraft; however, the purchaser is responsible for payment of the tax. For purposes of a lease or rental defined as a sale under 23VAC10-220-5, the lessee or person renting the aircraft is

deemed the purchaser of the aircraft and is responsible for payment of the applicable tax.

23VAC10-220-20. Basis of tax; estimate of tax; penalty for misrepresentation.

A. Basis of tax for sale or use. The ~~Commissioner~~ commissioner shall levy and collect tax for the use or sale of an aircraft upon the basis of the sale price of the aircraft.

1. Invoice required. Any person who sells an aircraft in Virginia must supply the buyer with an invoice signed by the seller or his representative. The invoice must state the sale price of the aircraft. The buyer must present the invoice to the ~~Commissioner~~ commissioner with his return and payment of the tax.

2. Basis of tax. The basis of the tax is the sale price, including any amount credited for trade-in or any other transaction of like nature, except that if the aircraft is first used or stored for use in Virginia six months or more after its acquisition, the tax will be based on the current market value.

a. Under the regulated definition of "aircraft," the ~~six month~~ six-month period referred to in this section begins only when a plane is capable of flight.

Example 1: Individual D purchased in Virginia on January 1, 1982, an inoperable wrecked plane. The aircraft was stored for repairs until September 1, 1982, when the aircraft license application was made. The aircraft sales and use tax is levied on the acquisition cost on September 1, 1982, when the plane qualified as an "aircraft." No credit is allowable for the ~~4.0%~~ retail sales and use tax imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia paid on the purchase of repair parts.

Example 2: Individual E purchased an aircraft in Maryland on January 1, 1982, and used it in Maryland until September 1, 1982, when licensed for use in Virginia. The tax is levied on the current market value of the aircraft on September 1, 1982, since it was brought into Virginia for use more than six months after acquisition.

Example 3: On January 1, 1982, individual A purchased an inoperable wrecked plane in North Carolina and transported the wreckage to Virginia on the day of purchase. The plane was brought into Virginia for restoration and ultimate use in ~~this state~~ the Commonwealth. The repairs were completed and the aircraft license application was made on September 1, 1982. The tax is levied on September 1, 1982, on the original cost of the wrecked plane plus restoration cost. The plane did not qualify as an aircraft in Virginia until capable of flight and therefore the tax is levied at such date.

B. Basis of tax for monthly gross receipts return. An approved and registered dealer must submit monthly returns

to the ~~Department~~ department and remit Virginia aircraft sales and use tax upon the gross receipts from the lease, rental, charter, or other compensatory use of any aircraft he elects to exclude from the sales tax at time of purchase. ~~4~~ For purposes of this section, the terms "lease" and "rental" refer only to leases or rentals not qualifying as sales under 23VAC10-220-5.

C. Invoice not available, assessment by ~~Commissioner~~ commissioner. Where the invoice is not available, or where the ~~Commissioner~~ commissioner has reason to believe the invoice does not reflect the true sale price, or the aircraft was purchased more than six months prior to its use or storage in Virginia, the ~~Commissioner~~ commissioner may assess the tax. Under these circumstances, the tax may be assessed in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of aircraft.

D. Fair price for rental or use. If the ~~Commissioner~~ commissioner finds that a dealer has made a charge for the rental or use of an aircraft that is lower than the fair market value of such rental or use, he may estimate a fair price. An estimate of fair price as used here means in accordance with the cost of the aircraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data. The amount by which the fair price estimated under this section exceeds the charge actually made by the dealer will be included in "gross receipts" as used in this section.

E. Misrepresentation. Any person who knowingly misrepresents on an invoice between buyer and seller, on any return, or to the ~~Commissioner~~ commissioner the value of an aircraft or the amount of tax due shall be, upon conviction, guilty of a Class 1 misdemeanor.

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 (23VAC10-220)

Dealer's Aircraft Sales and Use Tax Return, Form AST-2 (rev. 5/06)-

~~Virginia Aircraft Sales and Use Tax Return, Form AST-3 (rev. 12/06).~~

~~Sales and Use Tax Certificate of Exemption (For dealers who purchase tangible personal property for resale, lease or rental), Form ST-10 (rev. 10/99).~~

~~Business Registration Application, Form R-1 (rev. 3/08).~~

[Virginia Aircraft Sales and Use Tax Return, Form AST-3 \(rev. 7/2012\)](#)

[Sales and Use Tax Certificate of Exemption, Form ST-10 \(rev. 9/2015\)](#) (For a Virginia dealer who purchases tangible personal property for resale, or for lease or rental, or who purchases materials or containers to package tangible personal property for sale.)

[Retail Sales and Use Tax Return, Form ST-9 \(rev. 3/2013\)](#)

[Business Registration Application, Form R-1 \(rev. 9/2016\)](#)

VA.R. Doc. No. R17-4842; Filed December 14, 2016, 4:07 p.m.

Fast-Track Regulation

Title of Regulation: **23VAC10-310. Tax on Wills and Administration (amending 23VAC10-310-20, 23VAC10-310-30).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 10, 2017.

Effective Date: March 27, 2017.

Agency Contact: 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.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: This regulatory action amends 23VAC10-310, Tax on Wills and Administration, to update references to sections of the Code of Virginia to reflect the changes made by Chapter 614 of the 2012 Acts of Assembly, which recodified Title 64.1 of the Code of Virginia to Title 64.2. The regulation section affected by this action was promulgated prior to the enactment of Chapter 614. This regulatory action does not reflect any change in current tax policy and has no impact on the administration of any taxes.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action will merely correct references to sections of the Code of Virginia, this action is not expected to be controversial.

Substance: This regulatory action will amend 23VAC10-310, Tax on Wills and Administration, to update references to sections of the Code of Virginia to reflect the recodification changes made by Chapter 614 of the 2012 Acts of Assembly. Specifically, references to sections of Title 64.1 are corrected to the appropriate sections of Title 64.2.

Issues: As this regulatory action will merely correct references to sections of the Code of Virginia, there are no issues or disadvantages to the public or the Commonwealth associated with this regulatory action.

Regulations

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes several amendments to update references to sections of the Code of Virginia to reflect the recodification changes made by 2012 Acts of Assembly, Chapter 614.

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

Estimated Economic Impact. The proposed updating of Code of Virginia references will not affect tax rates, rules and policies, but will be beneficial by increasing clarity and reducing potential confusion for readers of the regulation.

Businesses and Entities Affected. The proposed amendments affect anyone who may potentially read the regulation. The regulation pertains to anyone who may have a will or may be the beneficiary of a will.

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

Projected Impact on Employment. The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

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 amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not create adverse impact for small businesses.

Adverse Impacts:

Businesses. The proposed amendments will not adversely affect businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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

Summary:

The amendments update references to sections of the Code of Virginia to reflect changes enacted by Chapter 614 of the 2012 Acts of Assembly, which recodified Title 64.1 of the Code of Virginia.

23VAC10-310-20. Levy.

The following are examples of the application or nonapplication of the tax:

1. The tax is imposed even if a will is probated without qualification.

2. A will, already admitted to probate and on which a tax has been paid in a Virginia court, will not be taxed in order to be recorded in any other Virginia county or city where there is real or personal property subject to the will. See § ~~64.1-94, 64.2-455~~ of the Code of Virginia.

3. The qualification of an administrator de bonis non (D.B.N.), is ordinarily not subject to tax when the tax has been paid on the original qualification of the personal representative; however, if the estate value has been determined to be in excess of the originally taxed value, the excess is taxable.

4. The filing of an affidavit with the clerk of court relating to real estate of an intestate decedent is not subject to tax. See § ~~64.1-135~~ 64.2-510 of the Code of Virginia.

5. A recovery for death by wrongful act is not taxable because it does not pass property by will or by intestacy.

23VAC10-310-30. Value of estate.

A.1. Resident. Upon the probate of the will of a resident decedent who owned real, tangible and intangible personal property, the tax is measured by the value of all intangible property wherever located and the value of the real and tangible property located in Virginia. "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

2. Nonresident. Upon the probate of an authenticated copy of the will of a nonresident decedent, the tax is measured only by the value of the real or tangible property located in the Commonwealth. See § ~~64.1-92~~ 64.2-450 of the Code of Virginia.

~~3.~~ B. The following are examples of property not included in the valuation of the estate for purposes of the tax:

~~a.~~ 1. Property passing by the exercise of a power of appointment.

~~b.~~ 2. Jointly held property with right of survivorship.

~~c.~~ 3. Insurance proceeds, unless payable to the estate.

~~d.~~ 4. Property that passes by inter vivos trust.

~~e.~~ 5. Bonds payable on debt to a named beneficiary.

4. C. Assets owned as tenants in common or joint tenants without right of survivorship are included to the extent of the interest of the deceased tenant.

5. D. Where a testator owned several parcels of real estate, but only devised certain of the parcels by will, leaving other parcels to pass according to the law of descent, the tax should be based upon all the real estate in the Commonwealth owned by the decedent at the date of valuation, and not only on the value of the parcels devised by will.

VA.R. Doc. No. R17-4893; Filed December 12, 2016, 1:25 p.m.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Proposed Revision - 2008 Ozone National Ambient Air Quality Standards

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulations to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are 9VAC5-20-204, Nonattainment areas, Part II of 9VAC5-20 (General Provisions); 9VAC5-30-55, Ozone (8-hour, 0.08 ppm) of 9VAC5-30 (Ambient Air Quality Standards); 9VAC5-151-20, Applicability, of Part II of 9VAC5-151 (Regulation for Transportation Conformity); and 9VAC5-160-30, Applicability, of Part II of 9VAC5-160 (Regulation for General Conformity); Revision G16.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: January 9, 2017, to February 8, 2017.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Code of Virginia because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: On March 6, 2015 (80 FR 12264), EPA established a final rule for implementing the 2008 ozone national ambient air quality standards (NAAQS). This rule addresses a range of nonattainment area state implementation plan (SIP) requirements for the 2008 ozone NAAQS,

including how to address the revoked 1997 ozone NAAQS. The board's ambient air quality regulation must be amended accordingly, as well as the list of nonattainment areas to reflect this change. Clarifying text has also been added to the Regulation for Transportation Conformity and the Regulation for General Conformity.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105,

Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Sunnybrook Farm Solar, LLC Notice of Intent - Small Renewable Energy (Solar) Project Permit by Rule - Halifax County

The Department of Environmental Quality has received a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) from Sunnybrook Farm Solar, LLC. The project is proposed to be located in Halifax County. It will be a 51-megawatt alternating current photovoltaic solar facility on portions of five parcels totaling approximately 340 acres off of Long Branch Lane outside Scottsburg. The project will be comprised of approximately 210,000 polycrystalline solar collectors and associated equipment.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

DEPARTMENT OF HEALTH

January 2017 - Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. All applications may be submitted year round; however, VDH will conduct one round of evaluations for requests submitted by the deadlines. Applications postmarked/received after the due date will be considered for funding in the following round. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program (if funds are available). The fiscal year (FY) 2018 DWSRF Intended Use Plan will be developed using collected input on these issues.

(1) Public Comments and Set-Aside Suggestions Invited (Submission deadline April 1, 2017)

To identify ways to improve this program, VDH seeks meaningful input from the public, the waterworks industry, or other interested parties. Anyone may make comments or recommendations to support or revise the program. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(2) Construction and Refinance Fund Requests (Application deadline April 1, 2017)

Owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, and the availability of matching funds. VDH anticipates a funding level of \$25 million.

(3) 1452(k) Source Water Protection Initiatives (Application deadline April 1, 2017)

Loan funds are available to (1) community and nonprofit noncommunity waterworks to acquire land or conservation easements and (2) community waterworks to establish local voluntary incentive-based protection measures.

(4) Lead Service Line (LSL) Replacement Program: (Application deadline April 1, 2017)

In an effort to accelerate the removal of lead in drinking water the DWSRF Program has made funding available for the complete removal of the public and private portions of the LSLs. In conjunction with other available funds this program intends to provide up to \$5,000 dollars as grant funds (of which up to \$500 may be eligible as an administrative fee) for each service line replaced on a homeowner's side of the meter. The LSL includes pipe entry into the structure (up to and including a shut-off valve) but excludes the premise plumbing.

(5) Planning and Design Awards (Applications received and reviewed for award year-round.)

Private and public owners of community and nonprofit noncommunity waterworks are eligible to apply for funds, which can be up to \$50,000 per project for small, financially stressed waterworks serving fewer than 10,000 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds are to assist waterworks owners with future applications to construction funding agencies.

The VDH's DWSRF Program Design Manual describes the features of the listed opportunities for funding. After receiving public input, VDH will develop a draft Intended Use Plan (IUP) for public review and comment. When developed the draft IUP will describe specific details for use of the funds. A public meeting is planned and written comments will be accepted before submittal of a final version to the U.S. Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, program design manuals, and information materials are available on the department website: <http://www.vdh.virginia.gov/drinking-water/financial-construction-assistance-programs/drinking->

General Notices/Errata

[water-funding-program-details/](#). This information can also be obtained from Steven Pellei, PE, FCAP Director, by telephone (804) 864-7500, FAX (804) 864-7521, or writing to

Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Any comments can be directed to Mr. Pellei.

January 2017 Drinking Water Construction Funding Workshops

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Loan Fund (DWSRF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by March 3, 2017 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or fax at 804/864-7521. If you have any questions, please call Theresa Hewlett at 804/864-7501.

I wish to attend the meeting indicated below: NOTE – The Henrico workshop is at the Department of Environmental Quality (DEQ) Piedmont Regional Office.

- Danville** 9:00 a.m.-12:00 p.m., Wednesday, March 8, 2017 at the Pittsylvania/Danville Health District's 2nd Floor Library, 326 Taylor Drive, 2nd Floor, Danville, VA
- Abingdon** 9:00 a.m.-12:00 p.m., Thursday, March 9, 2017 at the Southwest VA Higher Education Center, Room 103/104, Abingdon, VA
- Lexington** 9:00 a.m.-12:00 p.m., Friday, March 10, 2017 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA
- Henrico** 9:00 a.m.-12:00 p.m., Monday, March 13, 2017 at the DEQ Piedmont Regional Office's Training Room, 4949-A Cox Road, Glen Allen, VA 23060
- Suffolk Area** 9:00 a.m.-12:00 p.m., Tuesday, March 14, 2017 at the Town of Windsor's Municipal Building Council Chamber, 8 East Windsor Blvd., Windsor, VA (Isle of Wight County)
- Culpeper** 9:00 a.m.-12:00 p.m., Wednesday, March 15, 2017 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA

There will be _____ person(s) in my party as follows:

Name	Address	Phone/email/FAX	Representing

VDH will attempt to notify attendees of any changes in venue if you provide complete contact information.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on December 19, 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 One Hundred Sixty-Seven (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack Classic" Final Rules for Game Operation (effective January 8, 2017)

Director's Order Number One Hundred Sixty-Eight (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bullseye Bingo" Final Rules for Game Operation (effective January 8, 2017)

Director's Order Number One Hundred Sixty-Nine (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Horoscope Crossword" Final Rules for Game Operation (effective January 8, 2017)

Director's Order Number One Hundred Seventy (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Money Bag Crossword" Final Rules for Game Operation (effective January 8, 2017)

Director's Order Number One Hundred Seventy-One (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Rockin' Bingo" Final Rules for Game Operation (effective January 8, 2017)

Director's Order Number One Hundred Seventy-Two (16)

Virginia Lottery's Scratch Game 1758 "Virginia Loteria" Final Rules for Game Operation (effective December 9, 2016)

Director's Order Number One Hundred Seventy-Three (16)

Virginia Lottery's Scratch Game 1771 "Gold Bar Bonanza" Final Rules for Game Operation (effective December 9, 2016)

Director's Order Number One Hundred Seventy-Four (16)

Virginia Lottery's Scratch Game 1743 "\$40,000 Taxes Paid" Final Rules for Game Operation (effective December 9, 2016)

Director's Order Number One Hundred Seventy-Five (16)

Virginia Lottery's Scratch Game 1761 "Blackjack" Final Rules for Game Operation (effective December 9, 2016)

Director's Order Number One Hundred Seventy-Seven (16)

Certain Virginia Print 'n Play Game; Prize Symbol Correction - Print 'n Play Lucky Bingo (133 16) (effective December 15, 2016)

BOARD OF PHARMACY

Requirement for One Hour of Continuing Education in 2017

Pursuant to § 54.1-3314.1 J of the Code of Virginia and to address in 2017 the opioid abuse crisis in Virginia, which the Health Commissioner recently declared a public health emergency, the Board of Pharmacy determined at its December full board meeting that all pharmacists must obtain at least one hour of continuing education (CE) in 2017 in any of the following subject areas: proper opioid use, opioid overdose prevention, or naloxone administration. The one-hour minimum requirement is part of the required 15 hours of CE that must be obtained during 2017 and is not in addition to the required 15 hours. This is a one-time requirement; further action of the board would be required to mandate CE in a specific topic in future years. This requirement applies only to pharmacists, not pharmacy technicians.

This requirement does not identify specific objectives that must be included in selected CE program, nor has a list of approved CE programs been identified from which to choose. The requirement is intended to be general to allow each pharmacist the flexibility in choosing an appropriate CE program that focuses on the proper use of opioids, opioid overdose prevention, or naloxone administration. The CE must be obtained between January 1, 2017, and December 31, 2017.

Contact Information: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

STATE WATER CONTROL BOARD

Total Maximum Daily Loads for Kerr Reservoir Tributaries

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Kerr Reservoir Tributaries Bacteria in Charlotte, Mecklenburg, and Brunswick Counties. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for the recreation use due to elevated levels of bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require the DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Little Bluestone Creek (VAC-L77R_LNE01A98) is located in Mecklenburg County. It is 9.38 miles in length and begins at the fork upstream of Route 696 to Kerr Reservoir.

General Notices/Errata

Bluestone Creek (VAC-L77R_BST02A06) is located in Charlotte and Mecklenburg Counties. It is 8.25 miles in length and begins from its headwaters to Moddy Creek.

Allen Creek, Unnamed Tributary (VAC-L78R_XUQ01A04) is located in Mecklenburg County. It is 1.24 miles in length and includes the entire tributary located just south of the intersection of Redlawn and Baskerville Roads.

Allen Creek (VAC-L78R_ALN03A04) is located in Mecklenburg County. It is 8.97 miles in length and begins at Layton Creek downstream to Cox Creek.

Allen Creek (VAC-L78R_ALN04A06) is located in Mecklenburg County. It is 15.28 miles in length and begins from its headwaters to Layton Creek.

Layton Creek (VAC-L78R_LYT01A06) is located in Mecklenburg County. It is 8.64 miles in length and begins from its headwaters to its confluence with Allen Creek.

Cotton Creek (VAC-L78R_CTT01A08) is located in Mecklenburg County. It is 4.39 miles in length and begins from its headwaters to its mouth on the Roanoke River.

Kettles Creek (VAC-L78R_KTT01A12) is located in Mecklenburg County. It is 5.48 miles in length and begins from its headwaters to the mouth.

Smith Creek (VACL79R_SMI01A08) is located in Mecklenburg County. It is 1.89 miles in length and begins at the Virginia-North Carolina state line to its mouth on Kerr Reservoir.

Lizard Creek (VAC-L81R_LIZ01A10) is located in Brunswick County. It is 2.73 miles in length and begins from its headwaters to Lake Gaston.

The final public meeting on the development of the TMDL to address the primary contact use for these segments will be held on:

January 19, 2017, 6:30 p.m. to 8:30 p.m., 461 Madison Street (Council Chambers), Boydton, VA 23917

In case of inclement weather, the alternate meeting date is:

January 23, 2017, 6:30 p.m. to - 8:30 p.m., 461 Madison Street (Council Chambers), Boydton, VA 23917

The public comment period begins January 19, 2017, and ends February 21, 2017.

A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed below. Please note, all written comments should include the name, address, and telephone number of the

person submitting the comments and should be sent to Paula Main, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.main@deq.virginia.gov.

Proposed Consent Special Order for Archer Western Contractors, LLC

An enforcement action has been proposed for Archer Western Contractors, LLC for violations at the P984 Regimental Headquarters and P985 Bachelor Enlisted Quarters at the Yorktown Naval Weapons Station in Yorktown, Virginia. The State Water Control Board proposes to issue a special order by consent to Archer Western Contractors, LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 9, 2017, to February 8, 2017.

Proposed Consent Order for the Town of Bowling Green

An enforcement action has been proposed for the Town of Bowling Green in Caroline County, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Bowling Green Wastewater Treatment Facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from January 10, 2017, through February 9, 2017.

Proposed Consent Special Order for the Henry County Industrial Development Authority

An enforcement action has been proposed for the Henry County Industrial Development Authority for violations at the Patriot Centre at Beaver Creek Industrial Park in Martinsville, Virginia. The State Water Control Board proposes to issue a special order by consent to the Henry County Industrial Development Authority to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 9, 2017, to February 8, 2017.

Proposed Enforcement Action for Matthew Miller

An enforcement action has been proposed for Matthew Miller for 1124 Kathleen Lane in Chesapeake, Virginia, for violations of the 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. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 9, 2017, to February 8, 2017

complement and enhance one another by sharing pertinent regulatory information.

Proposed Enforcement Action for Real Investments, Inc.

An enforcement action has been proposed for Real Investments, Inc. for violations of the State Water Control Law in Virginia Beach, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from January 9, 2017, to February 8, 2017.

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/cumulstab.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

