



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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**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.

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### June 2017 through July 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
33:21	May 24, 2017	June 12, 2017
33:22	June 2, 2017 ( <b>Friday</b> )	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 ( <b>Tuesday</b> )	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 ( <b>Tuesday</b> )	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 ( <b>Tuesday</b> )	July 23, 2018

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Initial Agency Notice

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

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

Name of Petitioner: Virginia Coal and Energy Alliance.

Nature of Petitioner's Request: The Virginia Coal and Energy Alliance (VCEA) has petitioned the State Water Control Board to take action on EPA's Freshwater Aquatic Life Ambient Water Quality criteria for selenium (EPA selenium criteria). The EPA selenium criteria were finalized and published in the Federal Register on July 13, 2016, and include four elements - two that are fish tissue-based and two that are water column-based. The updated EPA selenium criteria reflect the latest scientific knowledge at the national level and provide a more up-to-date evaluation of impacts from selenium than Virginia's current surface water quality criteria at 9VAC25-260-140. Virginia's acute and chronic selenium criteria are over 25 years old, do not reflect the latest scientific information, and are unnecessarily stringent to protect aquatic life. As long as the outdated and obsolete criteria remain on the books, we are concerned that our members will be placed in peril of unreasonable compliance obligations, misguided enforcement actions and baseless lawsuits. At DEQ's July 20, 2016, Regulatory Advisory Panel meeting to address "carry-over" issues from the last Triennial Review of Water Quality Standards, VCEA representatives alerted DEQ to the availability of the new EPA selenium criteria and asked that selenium be addressed along with the other carry-over issues. VCEA now formally requests, pursuant to § 2.2-4007 of the Code of Virginia, that the existing surface water quality criteria for selenium be amended to incorporate the EPA selenium criteria, subject to appropriate tailoring for Virginia's waters and fish species. The board is empowered to adopt water quality standards in the Commonwealth. Section 62.1-44.15 of the Code of Virginia is required to review applicable water quality standards and as appropriate, modify and adopt federal standards. 33 USC § 1313(c)(1); 40 CFR § 131.20(a). EPA has recently published technical support materials to assist states in adopting the new selenium criteria, including guidance on monitoring fish tissue, water quality assessment and listings under § 303(d) of the Clean Water Act, and implementation of the criteria in NPDES permits. These technical support materials should provide a sufficient basis to guide adoption of the EPA selenium criteria in Virginia, subject to modifications that reflect the unique characteristics of Virginia's waterbodies and fish species. We note that EPA's criteria include a hierarchy with a stated preference for the use of fish tissue data, where available, in evaluating

compliance with the criteria. The criteria provide that where fish tissue data are available, the fish tissue criteria supersede the water column criteria. This same hierarchy should be adopted and the fish tissue criteria should be allowed to prevail over any water column criteria where fish tissue data are available. Importantly, the board will need to consider state- or regionally-specific tailoring of the fish tissue values set by EPA. EPA's data set for fish tissue covers 10 fish genera for chronic toxicity for fish reproductive effects and seven fish genera for nonproductive effects. Some of these species do not occur in some or all of Virginia's waters. As a result, we believe that the fish tissue criteria will need to be adjusted so that they are reflective of, and protective of, the fish species that are actually present. In particular, we ask that regional criteria specific to the coalfields region of the Commonwealth, given its unique geography, geology and hydrology, be considered. Further, a translation procedure, consistent with Appendix K in the EPA selenium criteria document, needs to be adopted to provide a process for use by dischargers seeking site-specific criteria. Whether to deviate from EPA's guidance in the technical support document "FAQs: Implementing the 2016 Selenium Criterion in CWA § 303(d) and 305(b) Assessment, Listing, and TMDL Programs," as it relates to fishless waters will also need to be evaluated. EPA's guidance counsels that where no fish tissue data are available because waters have insufficient in-stream habitat and/or flow to support a population of any fish species on a continuous basis, or waters that once supported populations of one or more fish species but no longer support fish, the water column values are the applicable criteria and the water column data are sufficient to determine whether the criteria have been met. We urge rejection of EPA's approach to fishless waters. Where a waterbody does not have an actual, existing aquatic life use, the use simply does not apply. In that case, the criteria adopted to protect such a use also do not apply. We submit that this is consistent with the longstanding approach to uses and criteria in Virginia. By way of simple example, the "Public Water Supply" use only applies where a public water supply is shown to be present. In the absence of a documented public water supply, neither the use nor the corresponding "PWS" criteria apply. Finally, given the time it is likely to take to implement any change in the selenium criteria, and the need for permittees to appropriately adjust their operations to comply with any new limits, authorizing longer term compliance schedules for permittees will need to be considered, since compliance with criteria-based limits may in some cases take more than five years.

Agency Plan for Disposition of Request: The board received the petition at its meeting on May 17, 2017. The board is, in accordance with the provisions of the Administrative Process Act, announcing a public comment period on the petition. The comment period begins on June 12, 2017, and ends July 5, 2017. After close of the comment period comments

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## Petitions for Rulemaking

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will be reviewed and staff responses and a recommendation on initiating a rulemaking will be prepared and presented to the board for their consideration at a regular meeting of the board.

Public Comment Deadline: July 5, 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.

V.A.R. Doc. No. R17-18; Filed May 23, 2017, 8:38 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### 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 **9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters**. The purpose of the proposed action is to amend and reissue a Virginia Pollutant Discharge Elimination System (VPDES) general permit for discharges from pesticides applied to surface waters to control pests or applied to control pests that are present in or over, including near, surface waters. This permit expires on December 31, 2018, and needs to be reissued so pesticide operators can continue to have coverage in order to apply chemical pesticides that leave a residue in water, and all biological pesticide applications that are made in or over, including near, waters of the United States. In addition, a periodic review and small business impact review of this regulation will be conducted as part of this regulatory action. Please see the agency background document located on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) for the specific details on the conduct of the 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; § 402 of the Clean Water Act.

Public Comment Deadline: July 12, 2017.

Agency Contact: Elleanore M. 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 [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov).

VA.R. Doc. No. R17-5142; Filed May 23, 2017, 8:03 a.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action (NOIRA) for **12VAC30-50, Amount, Duration and Scope of Medical and Remedial Care and Services**, pertaining to coverage of mosquito repellent to prevent Zika virus, which was published in [33:1 VA.R. 3 September 5, 2016](#). The NOIRA is unnecessary as

the agency is proceeding with this regulatory action through the fast-track rulemaking process under § 2.2-4012.1 of the Code of Virginia. The fast-track rulemaking action was published in [33:19 VA.R. 2054-2058, May 15, 2017](#).

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

VA.R. Doc. No. R17-4835; Filed May 17, 2017, 12:09 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-60, Common Interest Community Management Information Fund Regulations**. The purpose of the proposed action is to conduct a full general review to ensure the Common Interest Community Management Information Fund Regulations are the least burdensome while still protecting the public in compliance with subsection E of § 2.2-4007.1 of the Code of Virginia and the principles of Executive Order 17 (2014). The regulations, which outline registration, renewal, and annual reporting requirements for associations, have not undergone cumulative review since their transfer from the Real Estate Board to the Common Interest Community Board in 2008. A thorough, general review is warranted to ensure that the regulations complement current Virginia law and reflect up-to-date administrative procedures and policies. The regulations will also be reviewed for consistency, and language may be amended to ensure the regulations are clearly written and easily understandable by affected parties and the general public. The board may propose other changes it identifies as necessary during the regulatory review process.

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

Statutory Authority: §§ 54.1-201 and 54.1-2349 of the Code of Virginia.

Public Comment Deadline: July 12, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R17-5087; Filed May 19, 2017, 11:44 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Final Regulation

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

**Title of Regulation:** 3VAC5-70. Other Provisions (amending 3VAC5-70-200).

**Statutory Authority:** §§ 4.1-103 and 4.1-111 of the Code of Virginia.

**Effective Date:** July 12, 2017.

**Agency Contact:** LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

#### Summary:

*Pursuant to Chapter 155 of the 2017 Acts of Assembly, the amendments authorize a permittee to purchase grain alcohol with a proof greater than 151 at government stores from July 1, 2017, through June 30, 2022.*

**3VAC5-70-200. Grain alcohol; permits; qualifications; records; refusal, suspension, or revocation.**

A. The board may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 101 at government stores for any of the following purposes:

1. Industrial use;
2. Commercial use;
3. Culinary use; or
4. Medical use.

During the period July 1, 2017, through June 30, 2022, the board may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 151 at government stores for any of the purposes listed in this subsection.

B. The application for such permits shall be on forms provided by the board.

~~B.~~ C. Permits may be issued to legitimate businesses for any one or more of the purposes stated in subsection A of this section upon presentation of satisfactory evidence of the conduct of the business activity involved. For good cause shown, the board may issue a permit to an individual for any of the uses stated in subsection A of this section.

~~C.~~ D. A person obtaining a permit shall maintain complete and accurate records of all purchases for a period of two years, ~~and the~~ The board and its special agents shall have free access during reasonable hours to all records required to be kept pursuant to this section.

~~D.~~ E. The board may refuse to issue, suspend, or revoke ~~the~~ a permit if ~~it shall have~~ the board has reasonable cause to believe that (i) the permittee would use, has used, or allowed to be used grain alcohol for any unlawful purpose; or ~~that~~ (ii) any cause exists under § 4.1-222 of the Code of Virginia for which the board may refuse to grant the applicant any license or has done any act for which the board might suspend or revoke a license under § 4.1-225 of the Code of Virginia.

VA.R. Doc. No. R17-5116; Filed May 19, 2017, 1:58 p.m.



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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### 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:** 4VAC20-720. **Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15).**

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

**Effective Date:** May 24, 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 remove the April 30, 2017, deadline for paying the oyster resource user fee and provide that the fee*

*shall be paid yearly in order to maintain eligibility to harvest oysters from public ground in that year.*

**4VAC20-720-15. Control date, license moratorium, transferability, and agents.**

A. The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date may not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

B. ~~Beginning February 23, 2016, only~~ Only individuals who have paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in ~~previous years any year from 2013 through 2016~~ may pay that fee ~~for the current year in 2017 for harvest of oysters from public ground in that year. Those individuals who are eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia shall do so by April 30, 2017, in 2017 and by January 1 in subsequent years in order to maintain their eligibility. In any year following 2017, eligibility to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia shall be limited to those individuals who paid the oyster resource user fee for harvest of oysters from public ground in the previous year.~~

C. Should the number of people eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in any given year fall below 600, a random drawing shall be held to award eligibility to pay that oyster resource user fee to individuals who were not previously eligible until the number of persons eligible to pay the fee reaches 600. Any Commercial Fisherman Registration Licensee may apply for the random drawing.

D. Any person eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia, or such person's legal representative, may transfer the eligibility to pay such user fee to:

1. A transferee who is the transferor's spouse, sibling, parent, child, grandparent, or grandchild and who possesses a current Commercial Fisherman Registration License and intends to participate in the public oyster fishery.
2. A transferee other than a person described in subdivision 1 of this subsection if the transferor has documented by mandatory reporting and buyers reports 40 days or more of public oyster harvest during the previous calendar year.

All transfers under this subsection shall be documented on a form provided by the Marine Resources Commission.

E. Exceptions to subsection B of this section shall only apply to those individuals who previously paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia and shall be based on documented medical hardships or active military leave that prevented the fisherman from fully satisfying the requirements of subsection B of this section.

F. No person shall serve as an agent for any public oyster gear licensee.

VA.R. Doc. No. R17-5111; Filed May 24, 2017; 2:31 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:** **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

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

**Effective Date:** May 24, 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](mailto:jennifer.farmer@mrc.virginia.gov).

**Summary:**

*The amendment changes the commercial harvest and landing quota of scup for May 1 through October 31 from 13,154 pounds to 11,812 pounds.*

**4VAC20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 50,000 pounds of scup.
2. Land in Virginia more than a total of 50,000 pounds of scup during each consecutive seven-day landing period, with the first seven-day period beginning on January 1.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 18,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~13,154~~ 11,812 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas



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and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 30 scup. When fishing is 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 30. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

V.A.R. Doc. No. R17-5110; Filed May 24, 2017, 2:13 p.m.

## Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> 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.</p>
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**Title of Regulation:** **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-10, 4VAC20-950-30, 4VAC20-950-47, 4VAC20-950-48, 4VAC20-950-49).**

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

**Effective Date:** June 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 include (i) increasing the black sea bass directed quota to 784,080 pounds, (ii) removing the hardship exception quotas provision, and (iii) adding "vessel" when referring to an alternate landing.*

### 4VAC20-950-10. Purpose.

The purposes of this chapter are to (i) reduce fishing mortality in the black sea bass fishery to ensure that overfishing does not occur, (ii) ~~increase~~ promote the health of the spawning stock biomass, (iii) improve the yield from the fishery, (iv) distribute shares of the black sea bass quota to those fishermen who demonstrate a previous history of participation in the fishery, and (v) encourage safe black sea bass aquaculture practices.

### 4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches, total length. It

~~shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches, total length, except as described in 4VAC20-950-70.~~

B. The minimum size of black sea bass harvested by recreational gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 12-1/2 inches, total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section, except as described in 4VAC20-950-70.

~~D. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches, total length, except as described in 4VAC20-950-70.~~

E. ~~D.~~ Total length shall be measured along the lateral midline from tip of nose to tip of tail excluding the caudal fin filament.

### 4VAC20-950-47. Commercial harvest quotas.

A. The annual commercial black sea bass directed fishery quota is ~~502,000~~ 784,080 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The annual commercial black sea bass bycatch fishery quota is 40,000 pounds. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount of the quota overage shall be deducted from the following year's bycatch fishing quota.

### 4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in Virginia in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service

Dealer Weigh-Out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person harvesting black sea bass to possess aboard any vessel in Virginia waters any amount of black sea bass that exceeds the combined total of any portion of the Virginia permitted landing limit, as described in subsection A of this section, and the North Carolina legal landing limit.

D. It shall be unlawful for any person permitted for the bycatch fishery to do any of the following:

1. Possess aboard a vessel or land in Virginia more than 200 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, except as provided in subdivision 2 of this subsection;
2. Possess aboard a vessel or land in Virginia more than 1,000 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, provided that the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Longfin squid, and Atlantic mackerel on board the vessel; or
3. Possess aboard a vessel or land in Virginia more than 100 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, when it is projected and announced that 75% of the bycatch fishery quota has been taken.

E. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

~~F. Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be transferred for a period of five years from the date the commission granted that hardship exception quota.~~

G. F. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A.

#### **4VAC20-950-49. Reporting requirements.**

A. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within one hour of landing, the Marine Resources Commission's Law Enforcement Operations Division to report his name and the name of the vessel, his permit number, the location where catch will be offloaded, and the estimated weight of the landing of black sea bass.

B. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within 24 hours of landing, the Marine Resources Commission's Interactive Voice Recording System to report the name of the permit holder and the name of the vessel that landed the black sea bass, date of landing, the permit number and the weight of black sea bass landed.

C. Any buyer of black sea bass from a directed fishery permittee, a bycatch fishery permittee, or an authorized alternate landing vessel shall maintain records of all purchases for the current year and prior year and make those records available to the Marine Resources Commission upon request.

VA.R. Doc. No. R17-5145; Filed May 25, 2017; 2:02 p.m.

### **DEPARTMENT OF MINES, MINERALS AND ENERGY Fast-Track Regulation**

**Title of Regulation:** 4VAC25-160. Virginia Gas and Oil Board Regulations (amending 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-110).

**Statutory Authority:** § 45.1-361.15 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 12, 2017.

**Effective Date:** July 27, 2017.

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

**Basis:** The Department of Mines, Minerals and Energy has the authority to promulgate regulations generally under § 45.1-161.3 of the Code of Virginia. The Virginia Gas and Oil Board has the authority to promulgate this regulation under § 45.1-361.15 of the Code of Virginia. The board is not mandated to promulgate this regulation, but it is necessary to ensure the board can meet its mandated authority to promote the safe and efficient exploration for and development, production, and utilization of gas and oil resources and protect the correlative rights of resource owners.

**Purpose:** The purpose of this regulatory action is to require electronic submissions and filings, eliminating unnecessary

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paper submissions, to remove unnecessary requirements, and to clarify ambiguous language throughout the regulation. As business practices continue to evolve with technology, it is important to ensure that the necessary regulation is as up to date as possible. These clarifying amendments will have no direct effect on public health, safety, or welfare.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial as it does not represent a substantive change to the regulation. The amendments are intended to clarify language, remove unnecessary requirements, and enhance the efficiency of notifications, submissions, and filings.

Substance: The amendments will ensure the language of the regulation reflects current business practices for the department and the board. The amendments specifically provide for electronic submission of information, alternative methods for notifying property owners, more efficient public notice requirements, and clarifying language for providing evidence of record transfer between new and previous unit owners.

Issues: The primary advantage to the public and regulated entities will be a clearer, more updated regulation, which reflects current business practices and regulatory needs. The primary advantage of this action to the Commonwealth is increased efficiency and clarity that result from these largely technical amendments. 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. As the result of a 2016 periodic review,<sup>1</sup> the Virginia Gas and Oil Board (Board) proposes to: 1) specify that documents submitted to the Board or the Department of Mines, Minerals and Energy (DMME) be sent electronically rather than as paper copies, 2) allow for additional methods of communication when certain notifications are required to be sent to other resource owners, 3) allow for when the location of a prospective gas or oil well is required to be published in a newspaper that the notice can include either a map or a description of the location, and no longer would need both, and 4) amend other language for improved clarity.

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

Estimated Economic Impact. The Virginia Gas and Oil Board Regulations govern gas and oil operations in the Commonwealth.

The current regulation requires paper copies of certain information including exhibits in support of applications be sent to DMME. The Board proposes to amend the language to

specify that the submissions be done electronically. In practice, firms regulated by the Board have submitted such documents electronically. Thus, this proposed amendment will have no impact beyond clarifying what actually occurs in practice.

The current regulation specifies that each applicant for a hearing to establish an exception to statewide spacing of oil and gas wells is to:

provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less.

The Board proposes to allow additional options, beyond certified mail, for the notification. Specifically, the Board proposes to also allow the notice be by another commercial carrier including but not limited to FedEx and UPS, return receipt requested, and electronic mail. The proposal to allow these alternate methods may moderately reduce costs for notifications, while still proving for proper notification. Thus the proposal likely would produce a net benefit.

When the identity or location of any person to whom notice is required to be given is unknown, the applicant (for the hearing to establish an exception to statewide spacing) is required to publish in a newspaper of general circulation in the locality where the land which is the subject of the application is located. Under the current regulation the notice must include a map showing the general location of the area that would be affected by the proposed action and a description that clearly describes the location or boundaries of the area that would be affected by the proposed action sufficient to enable local residents to identify the area. The Board proposes to amend the requirement to be that the notice published in a newspaper must include either a map or a description of the location but need not be both, as under the current regulation. This proposal would likely save applicants a moderate amount of cost in payment to a newspaper, while presumably still providing enough information for the location of the proposed well to be reasonably identifiable. Thus, this proposal will likely produce a net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect the 20 natural gas operators and approximately 200 contractors and subcontractors. DMME believes that the majority of the contractors and subcontractors would meet the definition of a small business.

Localities Particularly Affected. The proposed amendments do not particularly affect specific localities.

Projected Impact on Employment. The proposed amendments would not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments would not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments would not significantly 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 proposals to allow for additional methods of communication when certain notifications are required to be sent to other resource owners and to allow the required newspaper notifications to include either a map or a description of the location may moderately reduce costs for some small firms.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

<sup>1</sup> More information about the 2016 periodic review can be found on the Virginia Regulatory Town Hall at <http://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1539>

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The amendments (i) specify that documents submitted to the Virginia Gas and Oil Board or the Department of Mines, Minerals and Energy be sent electronically rather than as paper copies; (ii) allow for additional methods of communication when certain notifications are required to be sent to other resource owners; (iii) provide that when the location of a prospective gas or oil well is required to be published in a newspaper the notice can include either a map or a description of the location, no longer requiring both; and (iv) clarify an affidavit must be submitted to the board to release a previous unit operator from responsibility as the unit operator.*

**4VAC25-160-30. Administrative provisions.**

A. The Virginia Gas and Oil Board shall meet on the third Tuesday of each calendar month unless no action is required by the board or unless otherwise scheduled by the board. All hearings shall be scheduled in accordance with the requirements for notice by publication in § 45.1-361.19 of the Code of Virginia. Except where otherwise established by the

Act, the board may establish deadlines for filing materials for meetings or hearings scheduled on other than the third Tuesday of each month. Except where otherwise established by the Act, filings shall be in electronic form or a format prescribed by the board.

B. Applications to the board must be filed by the following deadlines:

1. All applications, petitions, appeals or other requests for board action must be received by the division at least 30 calendar days prior to the regularly scheduled meeting of the board. If the 30th day falls on a weekend or a legal holiday, the deadline shall be the prior business day.

2. When required, ~~two copies~~ of the following material must be filed with the division at least seven calendar days prior to the regularly scheduled meeting of the board in order for the application to be considered a complete application:

a. The affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4VAC25-160-40; and

b. Proof of notice by publication in accordance with 4VAC25-160-40 D.

C. A complete application that is not filed by the deadlines of this subsection shall be carried over to the next scheduled meeting of the board. A submission that does not contain a complete application shall not be considered by the board until the application is complete.

D. The division shall assign a docket number to each application or petition at the time of payment receipt and filing. The division shall notify the applicant of the completed filing and assigned docket number. The docket number shall be referenced when submitting material regarding the application or petition.

E. In addition to the other requirements of this chapter, applications to the board shall meet the following standards:

1. Each application for a hearing before the board shall be headed by a caption, which shall contain a heading including:

- a. "Before the Virginia Gas and Oil Board";
- b. The name of the applicant;
- c. The relief sought; and
- d. The docket number assigned by the division.

2. Each application shall be signed by the applicant, an authorized agent of the applicant, or an attorney for the applicant, certifying that, "The foregoing application to the best of my knowledge, information, and belief is true and correct."

3. Exhibits shall be identified by the docket number and an exhibit number and may be introduced as part of a person's presentation.

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4. Applicants shall submit ~~eight sets~~ a copy of each application and exhibits. Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia, who have notified the division of their request for copies of exhibits, and are expected to be in attendance at the hearing.

F. Applications for the establishment and modification of a unit, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.

G. All parties in any proceeding before the board are entitled to appear in person or be represented by counsel, as provided for in the Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia.

#### **4VAC25-160-40. Notice of hearings.**

A. Each applicant for a hearing to establish an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia shall provide notice by electronic mail, by certified mail, return receipt requested, or by another commercial carrier including Federal Express and United Parcel Service, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less. Each applicant for a hearing to establish an exception to a well location provided for in a drilling unit established by an order of the board shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying the unit where the exception is requested.

B. Each applicant shall include, in or with the mailed notice of the hearing required under § 45.1-361.19 of the Code of Virginia, the following information:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and proposed provisions of the order or proposed order;
4. Citations of statutes, rules, orders and decided cases supporting the relief sought;
5. A statement of the type of well or wells (gas, oil or coalbed methane gas);
6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1983, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. The plat shall include property lines taken from (i) deed descriptions and chain of title, (ii) county courthouse

records, or (iii) a physical survey for each land track in the unit. The location of the well and the percentage of acreage in each tract in the unit shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;

b. For a field rule, the notice should include: a description of the pool or pools in the field, the boundaries of the field, information on the acreage and boundaries of the units proposed to be in the field and any proposed allowable production rates; or

c. For a location exception, the notice should include: a description of the proposed well location in relation to other wells within statewide spacing limits or in relation to the allowable area for drilling within a unit;

7. A description of the interest or claim of the respondent being notified;

8. A description of the formation or formations to be produced;

9. An estimate of the amount of reserves of the unit;

10. An estimate of the allowable costs in accordance with 4VAC25-160-100; and

11. How interested persons may obtain additional information or a complete copy of the application.

C. When after a diligent search the identity or location of any person to whom notice is required to be given in accordance with subsection A or B of this section is unknown at the time the applicant applies for a hearing before the board, the applicant for the hearing shall cause a notice to be published in a newspaper of general circulation in the county, counties, city, or cities where the land or the major portion thereof which is the subject of the application is located. The notice shall include:

1. The name and address of the applicant;

2. A description of the action to be considered by the board;

3. A map showing the general location of the area that would be affected by the proposed action ~~and~~ or a description that clearly describes the location or boundaries of the area that would be affected by the proposed action sufficient to enable local residents to identify the area;

4. The date, time and location of the hearing at which the application is scheduled to be heard; and

5. How interested persons may obtain additional information or a complete copy of the application.

D. Notice of a hearing made in accordance with § 45.1-361.19 of the Code of Virginia or this section shall be sufficient, and no additional notice is required to be made by the applicant upon a postponement or continuance of the hearing.

E. Each applicant for a hearing to modify an order established under § 45.1-361.21 or § 45.1-361.22 of the Code

of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each person having an interest underlying the tract or tracts to be affected by the proposed modification.

F. An applicant filing a petition to modify a forced pooling order established under § 45.1-361.21 or § 45.1-361.22 of the Code of Virginia to change the unit operator based on a change in the corporate name of the unit operator; a change in the corporate structure of the unit operator; or a transfer of the unit operator's interests to any single subsidiary, parent or successor by merger or consolidation is not required to provide notice. Other applicants for a hearing to modify a forced pooling order shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each respondent named in the order to be modified whose interest may be affected by the proposed modification.

#### **4VAC25-160-110. Recordkeeping.**

A. Each unit operator shall maintain records of production, income, payments made to lessors and escrow agents, any suspended payments, and other information prescribed by the board until the later of:

1. When the permits for all wells in the unit have been released by the department;
2. Twenty-four months after all escrowed funds for competing claims to ownership of coalbed methane gas in the unit have been paid out under order of the board; or
3. When so ordered by the board.

B. Each unit operator shall maintain itemized records of all costs charged to participating or nonparticipating operators until the later of:

1. Twenty-four months after all costs attributable to participating or nonparticipating operators have been settled and paid; or
2. When so ordered by the board.

C. Upon transfer of the right to conduct operations in a pooled drilling unit to a new unit operator, the old unit operator shall transfer all records required to be maintained in accordance with this section to the new unit operator. The old unit operator will not be released from responsibility as the unit operator until he has submitted, to the board, evidence an affidavit that the records have been received by the new unit operator.

D. In the event a unit operator wishes to terminate its legal existence and the unit is not transferred to a new unit operator, or when the permit for any well in the unit has been revoked and the bond forfeited by the department, the unit operator shall transfer, to the board, all records required to be maintained in accordance with this section.

VA.R. Doc. No. R17-5013; Filed May 22, 2017; 2:24 p.m.

### **Fast-Track Regulation**

Title of Regulation: **4VAC25-170. Geothermal Energy Regulations (amending 4VAC25-170-10, 4VAC25-170-30 through 4VAC25-170-80).**

Statutory Authority: § 45.1-179.7 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 12, 2017.

Effective Date: July 27, 2017.

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

Basis: The Department of Mines, Minerals and Energy has the authority to promulgate this regulation under §§ 45.1-161.3 and 45.1-179.6 of the Code of Virginia. Section 45.1-161.3 provides the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 of the Code of Virginia and other relevant chapters, which regulations shall be promulgated by the department, the chief, or the director, as appropriate, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of the Administrative Process Act. Section 45.1-179.6 authorizes the department to make and enforce rules, regulations, and orders and do whatever may reasonably be necessary to carry out the provisions of Chapter 15.1 (§ 45.1-179.1 et seq.) of Title 45.1 of the Code of Virginia.

Purpose: The purpose of this action is to ensure that the department's Geothermal Energy Regulations are up to date, consistent with existing law, and easy to understand. The minor amendments to the regulation accomplish these goals. These clarifying amendments will have no direct effect on public health, safety, or welfare.

Rationale for Using Fast-Track Rulemaking Process: The department is using the fast-track rulemaking process because this rulemaking is noncontroversial. The proposed changes bring this regulation in line with the Virginia Gas and Oil Act (§ 45.1-361.1 et seq. of the Code of Virginia) and attendant regulations, as well as allowing for permit applications to be filed electronically. Other amendments are made for clarity.

Substance: Bonding requirements are amended to clarify and match requirements in § 45.1-361.31 of the Virginia Gas and Oil Act. Requirements are also amended to match existing fee structure for gas and oil wells resulting in a fee increase; however, the department has not received any permit applications for geothermal energy. The regulations are also amended to require electronic submissions to the department to reflect Division of Gas and Oil's electronic permitting system and current business practices. Language was amended for clarity, the removal of unnecessary or redundant

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regulations, and to align with existing Gas and Oil regulations.

Issues: The primary advantage to this action to the Commonwealth is increased efficiency and clarity that result from these largely technical amendments. There is no impact on or advantage to the public. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track 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. As the result of a periodic review,<sup>1</sup> the Department of Mines, Minerals and Energy (DMME) proposes to: 1) raise the geothermal exploration, production, and injection well permit application fee from \$75 to \$600, 2) allow professional engineers to do work that currently only registered surveyors may do, 3) increase the required lengths for cement plugs of wells, 4) require that the permanent sign marking the location of each abandoned well include the date the well was plugged, 5) give owners and operators additional time to submit documents and notifications, 6) require that all documents and notifications be submitted electronically, and 7) amend other language for improved clarity. There is no geothermal energy development in the Commonwealth currently.<sup>2</sup>

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

## Estimated Economic Impact

### Background

Unlike most energy sources that require heat to be manufactured by humans, geothermal energy utilizes the natural heat of the earth and its tectonic processes. In order to access this energy, wells are drilled into areas below the earth's crust where there are aquifers of already heated water, or steam. As pressure increases deeper into the earth, water is unable to turn into steam as it is heated because there is so much pressure. As a result, 'superheated water' is produced at very deep depths of the earth. As wells are drilled into the rock that houses this water, its steam is converted into mechanical energy for utilization.<sup>3</sup>

The utilization of energy from geothermal wells releases greenhouse gases trapped in the earth core such as carbon dioxide, hydrogen sulfide, methane, and ammonia.<sup>4</sup> These emissions are lower than those associated with the use of fossil fuels, for which the adoption of geothermal energy sources is considered to have the potential to mitigate global warming and have a favorable impact on the environment.<sup>5</sup> An analysis by the Argonne National Laboratory concluded that geothermal waters pose a large potential risk to water quality, if released into the environment, due to high

concentrations of toxics including antimony, arsenic, lead, and mercury, but that the risk of release can be virtually eliminated through proper design and engineering controls.<sup>6</sup>

### Application Fee

DMME proposes to raise the geothermal well permit application fee (currently \$75) to match the \$600 fee charged for oil and gas well permit applications. Unlike for oil and gas, the agency has never received a permit application for geothermal energy. Thus the cost in terms of staff time of processing a geothermal energy well permit application, as well as regulating the industry for environmental protection, would likely be equal or greater per permit processed than for oil and gas staff. Raising the geothermal fee to match oil and gas well permit application fee would better reflect the cost incurred.

There is the possibility that the higher fee might discourage the pursuit of some geothermal energy drilling for some potentially marginally profitable wells; but given the overall cost (at least tens of thousands of dollars) of drilling, the higher fee would not likely be the deciding factor in most cases. Additionally, the benefit of helping ensure adequate protection of the water supply and air quality through paying for DMME staff to check that proper procedures and designs are followed likely exceeds the cost.

### Surveying and Plat Certification

Under the current regulation, the location of production and injection wells must be surveyed and the plat certified by a registered surveyor. DMME proposes to allow professional engineers (PEs) to do this work as well. PEs are allowed to do such work for gas and oil permit applications under the Virginia Gas and Oil Board Regulations. Allowing PEs to do this work may be beneficial in that it expands the pool of qualified people who may be available. This could perhaps save time and cost for a firm seeking to extract geothermal energy.

### Cement Plug Lengths

The regulation requires that any drilling well completed as a dry hole from which the rig is to be removed be cemented. This is for environmental protection. As described in the Background section of this document, geothermal waters pose a large potential risk to water quality, if released into the environment, due to high concentrations of toxics including antimony, arsenic, lead, and mercury. The cement plugs help prevent this contamination from occurring from wells that are no longer in use.

Under the current regulation, a cement plug not less than 50 feet in length must be placed immediately above each producing formation; and a plug not less than 20 feet in length must be placed at or near the surface of the ground in each hole. DMME proposes to require that both plug lengths be 100 feet in order to reduce the risk of pollutants entering the water supply. The agency estimates that the additional cost per plug of the longer required lengths would be less



than \$200 per plug. To the extent that the longer required plugs would significantly improve environmental protection, then the benefits likely exceed the costs of this proposal.

Abandoned Well Signage

The exact location of each abandoned well must be marked by a piece of pipe not less than four inches in diameter securely set in concrete and extending at least four feet above the general ground level. A permanent sign of durable construction must be welded or otherwise permanently attached to the pipe, and shall contain the well identification information. DMME proposes to require that the permanent sign specify the date the well was plugged. This proposal has inconsequential cost and may provide valuable information. Thus it likely produces a net benefit.

Document Submission

Under the current regulation, each well operator, owner, or designated agent, within 30 days after the completion of any well, shall furnish to DMME a copy of the drilling log. The agency proposes to allow up to 90 days for the delivery of drilling log. The extra time may allow potential geothermal well operator and owners to use staff time more efficiently.

Additionally, DMME proposes to require that all documents and notifications be submitted electronically. It is very likely that any potential firm that has the financial wherewithal to invest at least tens of thousands of dollars to pursue geothermal energy would have the capability and preference for electronic submissions. Thus this proposal would likely not have significant impact.

Businesses and Entities Affected. DMME has never received a permit application for geothermal drilling or well construction. The proposed amendments would apply to businesses, which engage in drilling for geothermal resources or construction of a geothermal well in Virginia, or those that operate, own, control or are in possession of any geothermal well.

Localities Particularly Affected. There have been no known geothermal wells in Virginia, and there are no known locations currently considered likely for development.<sup>7</sup> Thus, there are no localities known to be particularly affected.

Projected Impact on Employment. There is no current employment in the Commonwealth associated with geothermal energy. The proposed amendments are unlikely to significantly affect that.

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

Real Estate Development Costs. The higher permit application fee and the increased required lengths for cement plugs would moderately increase the cost of developing land for geothermal energy extraction. The proposal to allow PEs to do surveying and plat certification may moderately reduce such 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 businesses in the Commonwealth currently participate in the geothermal energy industry. The proposals to increase the permit application fee and to increase the required cement plug lengths would moderately increase costs for any potential future businesses that did choose to drill for geothermal energy in Virginia. The proposal to allow PEs to do surveying and the plat certification could moderately reduce costs.

Alternative Method that Minimizes Adverse Impact. There is no alternative method that would minimize the adverse impact while still maintaining the intended level of safety and environmental protection.

Adverse Impacts:

Businesses. No businesses in the Commonwealth currently participate in the geothermal energy industry. The proposals to increase the permit application fee and to increase the required cement plug lengths would moderately increase costs for any potential future businesses that did choose to drill for geothermal energy in Virginia.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

References:

Axtmann RC. "Environmental Impact of a Geothermal Power Plant." *Science*. 1975;187(4179):795-803.

Berrizbeitia, Luis D. "Environmental impacts of geothermal energy generation and utilization." Indiana University, 2014.

Clark CE, Harto CB, Sullivan JL, Wang MQ. "Water use in the development and operation of geothermal power plants." Argonne National Laboratory, 2011.

Glassley WE. "Geothermal energy: renewable energy and the environment." Boca Raton: CRC Press; 2010.

<sup>1</sup>See <http://townhall.virginia.gov/ViewPReview.cfm?PRid=1540>

<sup>2</sup>Source: Department of Mines, Minerals and Energy

<sup>3</sup>Berrizbeitia, Luis D. "Environmental impacts of geothermal energy generation and utilization." Indiana University, 2014.

<sup>4</sup>Axtmann RC. "Environmental Impact of a Geothermal Power Plant." *Science*. 1975;187(4179):795-803.

<sup>5</sup>Glassley WE. "Geothermal energy: renewable energy and the environment." Boca Raton: CRC Press; 2010.

<sup>6</sup>Clark CE, Harto CB, Sullivan JL, Wang MQ. "Water use in the development and operation of geothermal power plants." Argonne National Laboratory, 2011.

<sup>7</sup>Source: Department of Mines, Minerals and Energy



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Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The amendments (i) update the bonding requirements for consistency with § 45.1-361.31 of the Code of Virginia, (ii) increase the geothermal exploration, production, and injection well permit application fee from \$75 to \$600, (iii) allow professional engineers to do work that currently only registered surveyors may do, (iv) increase the required lengths for cement plugs of wells, (v) require that the permanent sign marking the location of each abandoned well include the date the well was plugged, (vi) give owners and operators additional time to submit documents and notifications, and (vii) require that all documents and notifications be submitted electronically.*

**4VAC25-170-10. Definitions.**

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

"Bottom hole temperature" means the highest temperature measured in the well or bore hole. It is normally attained directly adjacent to the producing zone, and commonly at or near the bottom of the borehole.

"Casing" means all pipe set in wells.

"Conservation" means the preservation of geothermal resources from loss, waste, or harm.

"Correlative rights" means the mutual right of each overlying owner in a geothermal area to produce without waste a just and equitable share of the geothermal resources. Just and equitable shares shall be apportioned according to a ratio of the overlying acreage in a tract to the total acreage included in the geothermal area.

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

"Designated agent" means that person appointed by the owner or operator of any geothermal resource well to represent him.

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

"Division director" means the Director of the Division of Gas and Oil, also known as the Gas and Oil Inspector as defined in the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia or his authorized agent.

"Drilling log" means the written record progressively describing all strata, water, minerals, geothermal resources, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, caving strata, casing records and such other information as is usually recorded in the normal procedure of

drilling. The term shall also include the downhole geophysical survey records or logs if any are made.

"Exploratory well" means an existing well or a well drilled solely for temperature observation purposes preliminary to filing an application for a production or injection well permit.

"Geothermal area" means the general land area that is underlaid or reasonably appears to be underlaid by geothermal resources in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be from time to time designated by the department.

"Geothermal energy" means the usable energy produced or that can be produced from geothermal resources.

"Geothermal reservoir" means the rock, strata, or fractures within the earth from which natural or injected geothermal fluids are obtained.

"Geothermal resource" means the natural heat of the earth at temperatures 70°F or above with volumetric rates of 100 gallons per minute or greater and the energy, in whatever form, present in, associated with, or created by, or that may be extracted from, that natural heat. This definition does not include ground heat or groundwater resources at lower temperatures and rates that may be used in association with heat pump installations.

"Geothermal waste" means any loss or escape of geothermal energy, including, but not limited to:

1. Underground loss resulting from the inefficient, excessive, or improper use or dissipation of geothermal energy; or the locating, spacing, construction, equipping, operating, or producing of any well in a manner that results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in Virginia; provided, however, that unavoidable dissipation of geothermal energy resulting from oil and gas exploration and production shall not be construed to be geothermal waste.
2. The inefficient above-ground transportation and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause, unnecessary or excessive surface loss or destruction of geothermal energy;
3. The escape into the open air of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

"Geothermal well" means any well drilled for the discovery or production of geothermal resources, any well reasonably presumed to contain geothermal resources, or any special well, converted producing well, or reactivated or converted abandoned well employed for reinjecting geothermal resources.

"Injection well" means a well drilled or converted for the specific use of injecting waste geothermal fluids back into a geothermal production zone for disposal, reservoir pressure maintenance, or augmentation of reservoir fluids.

"Monitoring well" means a well used to measure the effects of geothermal production on the quantity and quality of a potable groundwater aquifer.

"Operator" means any person drilling, maintaining, operating, producing, or in control of any well, and shall include the owner when any well is operated or has been operated or is about to be operated by or under the direction of the owner.

"Owner" means the overlying property owner or lessee who has the right to drill into, produce, and appropriate from any geothermal area.

"Permit" means a document issued by the department pursuant to this chapter for the construction and operation of any geothermal exploration, production, or injection well.

"Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation whether domestic or foreign, agency or subdivision of this or any other state or the federal government, any municipal or quasi-municipal entity whether or not it is incorporated, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

"Production casing" means the main casing string which protects the sidewalls of the well against collapse and conducts geothermal fluid to the surface.

"Production record" means written accounts of a geothermal well's volumetric rate, pressure and temperature, and geothermal fluid quality.

"Sequential utilization" means application of the geothermal resource to a use with the highest heat need and the subsequent channeling of the resource to other uses with lower temperature requirements before injection or disposal of the geothermal fluid.

~~"Surface casing" (water protection string) means pipe designed to protect the freshwater sands.~~

"Unitized drilling operation" means the management of separately owned tracts overlying a geothermal area as a single drilling unit.

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

#### **4VAC25-170-30. Bonds, permits and fees.**

A. 1. Before any person shall engage in drilling for geothermal resources or construction of a geothermal well in Virginia, such person shall ~~file with the division director a completion bond with a surety company licensed to do business in the Commonwealth of Virginia in the amount of~~ give bond with surety acceptable to the division director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site, but in no case shall the amount of bond be less than \$10,000 for each exploratory and injection well, and \$25,000 for each production well.

Blanket bonds of \$100,000 may be granted at the discretion of the division director.

2. The return of such bonds shall be conditioned on the following requirements:

a. Compliance with all statutes, rules, and regulations relating to geothermal regulations and the permit.

b. Plugging and abandoning the well as approved by the division director in accordance with 4VAC25-170-80.

3. A land stabilization bond of \$1,000 per acre of land disturbed shall be required. Such bond will be released once drilling is completed and the land is reclaimed in accordance with 4VAC25-170-40.

4. Liability under any bond may not be terminated without written approval of the division director.

B. Each exploration, production, and injection well permit application shall be accompanied by payment of a ~~\$75~~ \$600 application fee.

1. Applications will not be reviewed until the operator or designated agent submits proof of compliance with all pertinent local ordinances.

Before commencement of exploratory drilling operations on any tract of land, the operator or designated agent shall file an exploration permit application with the department. An accurate map of the proposed wells on an appropriate scale showing adjoining property lines and the proposed locations using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and the depths and surface elevations shall be filed with the application. The application also shall include an inventory of local water resources in the area of proposed development.

2. Before commencement of production or injection well drilling, an application to produce and inject geothermal fluids shall be filed in the form of a notice of intent to proceed in accordance with the provisions of 4VAC25-170-40.

3. New permit applications must be submitted if, either prior to or during drilling, the operator desires to change the location of a proposed well. If the new location is within the boundaries established by the permit or within an unitized drilling operation, the application may be made orally and the division director may orally authorize the commencement or continuance of drilling operations. Within 10 days after obtaining oral authorization, the operator shall file a new application to drill at the new location. A permit may be issued and the old permit ~~annulled~~ canceled without payment of additional fee. If the new location is located outside the unitized drilling unit covered by the first permit, no drilling shall be commenced or continued until the new permit is issued.

4. All applications, requests, maps, reports, records, notices, filings, submissions, and other data (including report forms) required by or submitted to the department

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shall be ~~signed by the owner, operator, or designated agent submitting such materials~~ in electronic form or a format prescribed by the director.

5. The department will act on all permit applications within 30 days of receipt of an application or as soon thereafter as practical.

## **4VAC25-170-40. Notification of intent to proceed.**

The notification of intent to proceed with geothermal production or injection as required by 4VAC25-170-30 must be accompanied by (i) an operations plan, (ii) a geothermal fluid analysis, and (iii) a proposal for injection of spent fluids.

1. The operations plan shall become part of the terms and conditions of any permit that is issued, and the provisions of this plan shall be carried out where applicable in the drilling, production, and abandonment phase of the operation. The department may require any changes in the operations plan necessary to promote geothermal and water resource conservation and management, prevent waste, protect potable groundwater drinking supplies, or protect the environment, including a requirement for injection or unitization. The operations plan shall include the following information:

a. An accurate plat or map, on a scale not smaller than 400 feet to the inch, showing the proposed location using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and surface elevation of the production and injection wells as determined by survey, the courses and distances of such locations from two permanent points or landmarks on said tract, the well numbers, the name of the owner, the boundaries and acreage of the tract on which the wells are to be drilled, the location of water wells, surface bodies of water, actual or proposed access roads, other production and injection wells on adjoining tracts, the names of the owners of all adjoining tracts and of any other tract within 500 feet of the proposed location, and any building, highway, railroad, stream, oil or gas well, mine openings or workings, or quarry within 500 feet of the proposed location. The location must be surveyed and the plat certified by a professional engineer or registered surveyor and bear his certificate number.

b. A summary geologic report of the area, including depth to proposed reservoir; type of reservoir; anticipated thickness of reservoir; anticipated temperature of the geothermal resource; anticipated porosity, permeability and pressure; geologic structures; and description of overlying formations and aquifers.

c. The method of meeting the guidelines of the Erosion and Sediment Control Regulations as adopted by the Virginia Soil and State Water Conservation Control Board pursuant to ~~§§ 10.1-561 to 10.1-564~~ § 62.1-44.15:52 of the Code of Virginia.

d. The method of disposing of all drilling muds and fluids, and all cement and other drilling materials from the well site; the proposed method of preventing such muds, fluids, drillings, or materials from seeping into springs, water wells, and surface waters during drilling operations.

e. The method of construction and maintenance of access roads, materials to be used, method to maintain the natural drainage area, and method of directing surface water runoff from disturbed areas around undisturbed areas.

f. The method of removing any rubbish or debris during the drilling, production, and abandonment phases of the project. All waste shall be handled in a manner that prevents fire hazards or the pollution of surface streams and groundwater.

g. The primary and alternative method of spent geothermal fluid disposal. All disposal methods shall be in accordance with state and federal laws for the protection of land and water resources.

h. The methods of monitoring fluid quality, fluid temperature, and volumetric rate of production and injection wells.

i. The method of monitoring potable drinking water aquifers close to production and injection zones.

j. The method of monitoring for land subsidence.

k. The method of plugging and abandoning wells and a plan for reclaiming production and injection well sites.

l. The method of cleaning scale and corrosion in geothermal casing.

m. A description of measures that will be used to minimize any adverse environmental impact of the proposed activities on the area's natural resources, aquatic life, or wildlife.

2. Geothermal fluid analysis.

a. A geothermal fluid analysis shall be submitted with the operations plan, and annually thereafter.

b. Acceptable chemical parameters and sampling methods are set forth in 4VAC25-170-70 B.

3. Proposal for injection of geothermal fluids.

a. Geothermal fluid shall be injected into the same geothermal area from which it was withdrawn in the Atlantic Coastal Plain. Plans for injection wells in this area shall include information on:

(1) Existing reservoir conditions.

(2) Method of injection.

(3) Source of injection fluid.

(4) Estimate of expected daily volume in gallons per minute per day.

(5) Geologic zones or formations affected.

- (6) Chemical analyses of fluid to be injected.
- (7) Treatment of spent geothermal fluids prior to injection.
  - b. Exemptions to the injection rule for geothermal fluid shall be approved by the department. Such requests shall be accompanied by a detailed statement of the proposed alternative method of geothermal fluid disposal; the effects of not injecting on such reservoir characteristics as pressure, temperature, and subsidence; and a copy of the operator's or designated agent's no-discharge permit.

**4VAC25-170-50. Well construction and maintenance.**

A. Every person drilling for geothermal resources in Virginia, or operating, owning, controlling or in possession of any well as defined herein, shall ~~paint or stencil and~~ post and keep posted in a conspicuous place on or near the well a sign showing the name of the person, firm, company, corporation, or association drilling, owning, or controlling the well, the company or operator's well number, and the well identification number thereof. Well identification numbers will be assigned to all approved permits according to the USGS groundwater site inventory system. The lettering on such sign shall be kept in a legible condition at all times.

B. The division director shall receive notice prior to the commencement of well work concerning the identification number of the well and the date and time that well work is scheduled to begin. ~~Telephone notice will fulfill this requirement.~~

C. 1. Drilling-fluid materials sufficient to ensure well control shall be maintained in the field area and be readily accessible for use during drilling operations.

- 2. All drilling muds shall be used in a fashion designed to protect freshwater-bearing sands, horizons, and aquifers from contamination during well construction.
- 3. Drilling muds shall be removed from the drilling site after the well is completed and disposed of in the method approved in the operations plan.
- 4. Operations shall be conducted with due care to minimizing the loss of reservoir permeability.

D. All wells must be drilled with due diligence to maintain a reasonably vertical well bore. Deviation ~~tests~~ surveys must be recorded in the drilling log for every 1000 feet drilled.

E. 1. A well may deviate intentionally from the vertical with written permission by the division director. Such permission shall not be granted without notice to adjoining landowners, except for side-tracking mechanical difficulties.

- 2. When a well has been intentionally deviated from the vertical, a directional survey of the well bore must be filed with the department within 30 days after completion of the well.
- 3. The department shall have the right to make, or to require the operator to make, a directional survey of any well at the request of an adjoining operator or landowner

prior to the completion of the well and at the expense of said adjoining operator or landowner. In addition, if the department has reason to believe that the well has deviated beyond the boundaries of the property on which the well is located, the department also shall have the right to make, or to require the operator to make, a directional survey of the well at the expense of the operator.

F. 1. Valves approved by the division director shall be installed and maintained on every completed well so that pressure measurements may be obtained at any time.

2. Blow-out preventers during drilling shall be required when the ~~working~~ formation pressure on the wellhead connection is or could be greater than 1000 psi.

G. 1. Geothermal production wells shall be designed to ensure the efficient production and elimination of waste or escape of the resource.

2. All freshwater-bearing sands, horizons, and aquifers shall be fully protected from contamination during the production of geothermal fluids.

3. a. ~~Surface casing~~ The water protection string shall extend from a point 12 inches above the surface to a point at least 50 feet below the deepest known groundwater aquifer or horizon.

b. The operator, owner, or designated agent shall use new casing. Only casing that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

c. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the division director. In addition:

- (1) Each surface string shall be cemented upward from the bottom of the casing to the surface.
- (2) Cement shall be allowed to stand for 24 hours or until comprehensive strength equals 500 psi before drilling.

d. The department may modify casing and cementing requirements when special conditions demand it.

4. a. The owner, operator, or designated agent shall use new casing. Only production casing that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

b. Each well shall be cemented with a quantity of cement sufficient to fill the annular space from the production

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zone to the surface. The production casing shall be cemented to exclude, isolate, or segregate overlapping and to prevent the movement of fluids into freshwater zones.

c. Cement shall be allowed to stand for 24 hours or until compressive strength equals 500 psi before drilling.

d. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the division director.

e. The department may modify casing requirements when special conditions demand it.

f. The division director may require additional well tests if production or monitoring records indicate a leak in the production casing. When tests confirm the presence of a production casing leak, the division director may require whatever actions are necessary to protect other strings and freshwater horizons.

H. 1. The owner, operator, or designated agent shall use new casing. Only casing that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal injection wells.

2. The casing program shall be designed so that no contamination will be caused to freshwater strata. Injection shall be done through production casing adequately sealed and cemented to allow for monitoring of the annulus between the injection string and the last intermediate string or water protection string, as the case may be. Injection pressure shall be monitored and regulated to minimize the possibility of fracturing the confining strata.

3. Production casing shall be cemented through the entire freshwater zone.

4. The rate of injection of geothermal fluid shall not exceed the production rate.

5. Adequate and proper wellhead equipment shall be installed and maintained in good working order on every injection well not abandoned and plugged, so that pressure measurements may be obtained at any time.

I. 1. The division director ~~or a departmental representative~~ shall have access to geothermal well sites during ~~business~~ reasonable hours.

2. The state geologist or his designated representative shall have access to any drilling site for the purpose of examining whole cores or cuttings as may be appropriate.

J. At least 10 days prior to any chemical cleaning of production casing, the operator shall notify the division

director ~~in writing~~ of the type and amount of chemical to be used and obtain approval for its use.

K. The well operator, or his designated agent, shall file a completion report within ~~60~~ 90 days after well work is completed. The completion report shall be accompanied by copies of any drilling logs required under 4VAC25-170-40.

## **4VAC25-170-60. Records, logs and general requirements.**

A. 1. During the drilling and production phases of every well, the owner, operator, or designated agent responsible for the conduct of drilling operations shall keep at the well an accurate record of the well's operations as outlined in subsection C of this section. These records shall be accessible to the division director at all reasonable hours.

2. The refusal of the well operator or designated agent to furnish upon request such logs or records or to give information regarding the well to the department shall constitute sufficient cause to require the cessation or shutting down of all drilling or other operations at the well site until the request is honored.

~~3. Drilling logs supplied to the department will be kept in confidence in accordance with § 40.1-11 of the Code of Virginia.~~

~~4. 3. Copies of all drilling logs and productions records required by this chapter shall be sent electronically or mailed submitted to: the division director.~~

Virginia Gas and Oil Division Director  
Department of Mines, Minerals and Energy  
Division of Gas and Oil  
P.O. Box 159  
Lebanon, VA 24266

5. ~~4.~~ Samples representative of all strata penetrated in each well shall be collected and furnished to the Commonwealth. Such samples shall be in the form of rock cuttings collected so as to represent the strata encountered in successive intervals no greater than 10 feet. If coring is done, however, the samples to be furnished shall consist, at a minimum, of one-quarter segments of core obtained. All samples shall be handled as follows:

a. Rock cuttings shall be dried and properly packaged in a manner that will protect the individual samples, each of which shall be identified by the well name, identification number, and interval penetrated.

b. Samples of core shall be boxed according to standard practice and identified as to well name and identification number and interval penetrated.

c. All samples shall be shipped or mailed, charges prepaid, to:

Department of Mines, Minerals and Energy  
Division of Mineral Resources  
Fontaine Research Park  
900 Natural Resources Drive  
P.O. Box 3667  
Charlottesville, VA 22903

B. Each well operator, owner, or designated agent, within ~~30~~ 90 days after the completion of any well, shall ~~furnish~~ submit to the division director a copy of the drilling log. Drilling logs shall list activities in chronological order and include the following information:

1. The well's location and identification number.
2. A record of casings set in wells.
3. Formations encountered.
4. Deviation tests for every one thousand feet drilled.
5. Cementing procedures.
6. A copy of the downhole geophysical logs.

C. The owner, operator, or designated agent of any production or injection well shall keep or cause to be kept a careful and accurate production record. The following information shall be reported to the division director on a monthly basis for the first six months and quarterly thereafter, or as required by permit, unless otherwise stated:

1. Pressure measurements as monitored by valves on production and injection wells.
2. The volumetric rate of production or injection measured in terms of the average flow of geothermal fluids in gallons per minute per day of operation.
3. Temperature measurements of the geothermal fluid being produced or injected, including the maximum temperature measured in the bore-hole and its corresponding depth, and the temperature of the fluid as measured at the discharge point at the beginning and conclusion of a timed production test.
4. Hydraulic head as measured by the piezometric method.

**4VAC25-170-70. Groundwater monitoring.**

A. 1. Groundwater shall be monitored through special monitoring wells or existing water wells in the area of impact, as determined by the department.

2. Monitoring shall be performed and reported to the division director daily on both water quality and piezometric head for the first 30 days of geothermal production. Thereafter, quarterly tests for piezometric head and for water quality shall be reported to the division director.

3. The monitoring of groundwater shall meet the following conditions:

- a. A minimum of one monitoring well per production or injection well is required. Monitoring wells shall monitor those significant potable aquifers through which the well passes as required by the department.
- b. The monitoring wells shall be located within the first 50% of the projected cone of depression for the geothermal production well.
- c. The ~~well(s)~~ wells shall be constructed to measure variations in piezometric head and water quality. Groundwater shall be chemically analyzed for the

following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); and general parameters (pH, conductivity, dissolved solids, and hardness).

d. The department may require additional analyses if levels of the ~~above~~ parameters in subdivision 3 c of this subsection indicate their necessity to protect groundwater supplies.

B. 1. Chemical analyses of geothermal fluids shall be filed with the division director on an annual basis.

2. Samples for the chemical fluid analysis shall be taken from fluid as measured at the discharge point of the production well at the conclusion of a two-hour production test.

3. The production fluid shall be chemically analyzed for the following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); gas analyses (hydrogen sulfide, ammonia, carbon dioxide, and gross alpha); and general parameters (pH, conductivity, and dissolved solids).

4. The department may require additional analyses if levels of the ~~above~~ parameters in subdivision 3 of this subsection indicate follow-up tests are necessary.

C. 1. Subsidence shall be monitored by the annual surveys of a professional engineer or certified surveyor from vertical benchmarks located above the projected cone of depression, as well as points outside its boundaries. The surveys shall be ~~filed~~ filed with the division director by the operator or designated agent.

2. The department may order micro-earthquake monitoring, if surveys indicate the occurrence of subsidence.

D. 1. The operator, owner, or designated agent shall maintain records of any monitoring activity required in his permit or by this chapter. All records of monitoring samples shall include:

- a. The well identification number.
- b. The date the sample was collected.
- c. Time of sampling.
- d. Exact place of sampling.
- e. Person or firm performing analysis.
- f. Date analysis of the sample was performed.
- g. The analytical method or methods used.
- h. Flow-point at which sample was taken.
- i. The results of such analysis.

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2. The operator, owner, or designated agent shall retain for a period of five years any records of monitoring activities and results, including all original strip chart recordings of continuous monitoring installations. The period of retention will automatically be extended during the course of any litigation regarding the discharge of contaminants by the permittee until such time as the litigation has ceased or when requested by the division director. This requirement shall apply during the five-year period following abandonment of a well.

## **4VAC25-170-80. Abandonment and plugging of wells.**

A. Notification of intent to abandon any exploration, production, or injection well ~~must~~ shall be ~~received by~~ submitted to the division director ~~during working hours~~ at least ~~one day~~ 48 hours before the beginning of plugging operations. When notification of intent to abandon an exploratory, production, or injection well is received, the division director may send a departmental representative to the location specified and at the time stated to witness the plugging of the well.

B. 1. Any drilling well completed as a dry hole from which the rig is to be removed shall be cemented unless authorization to the contrary has been given by the division director.

2. The bottom of the hole shall be filled to, or a bridge shall be placed at the top of, each producing formation open to the well bore. Additionally, a cement plug not less than ~~50~~ 100 feet in length shall be placed immediately above each producing formation.

3. A continuous cement plug shall be placed through all freshwater-bearing aquifers and shall extend at least 50 feet above and 50 feet below said aquifers.

4. A plug not less than ~~20~~ 100 feet in length shall be placed at or near the surface of the ground in each hole.

5. The interval between plugs shall be filled with a nonporous medium.

6. The method of placing cement in the holes shall be by any method approved by the division director in advance of placement.

7. The exact location of each abandoned well shall be marked by a piece of pipe not less than four inches in diameter securely set in concrete and extending at least four feet above the general ground level. A permanent sign of durable construction shall be welded or otherwise permanently attached to the pipe, and shall contain the well identification information required by 4VAC25-170-50 and the date the well was plugged.

8. When drilling operations have been suspended for 60 days, the well shall be plugged and abandoned unless written permission for temporary abandonment has been obtained from the division director.

9. Within 20 days after the plugging of any well, the responsible operator, owner, or designated agent who

plugged or caused the well to be plugged shall file a notice of intent to plug or abandon and an affidavit with the department indicating the manner in which the well was plugged.

VA.R. Doc. No. R17-4993; Filed May 22, 2017; 2:26 p.m.

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## **TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

### **STATE BOARD OF CORRECTIONS**

#### **Proposed Regulation**

Titles of Regulations: **6VAC15-80. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (repealing 6VAC15-80-10 through 6VAC15-80-1270).**

**6VAC15-81. Standards for Planning, Design, Construction, and Reimbursement of Local Correctional Facilities (adding 6VAC15-81-10 through 6VAC15-81-1480).**

Statutory Authority: §§ 53.1-5, 53.1-80, and 53.1-82 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 11, 2017.

Agency Contact: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, Department of Corrections, PO Box 26963, Richmond, VA 23261-6963, telephone (804) 887-8215, or email james.bruce@vadoc.virginia.gov.

Basis: Sections 53.1-5, 53.1-80, 53.1-81, and 53.1-82 of the Code of Virginia authorize the Board of Corrections prescribe standards for the planning, design, construction, and reimbursement of local correctional facilities.

Purpose: Current 6VAC15-80 was originally issued in 1994, and since issuance there have been significant changes in the Code of Virginia, building and fire codes, and audit standards for the construction of local correctional facilities. Technological advances allow for changes in facility staff and management that impact the facility physical plant. Updating this chapter provides for improved facilities that preserve the health and enhance the safety of staff and inmates while ensuring that public funds are spent wisely to build safe, secure, and durable jail facilities.

Substance: The proposed regulation includes provisions that:

1. Limit value management analyses (VMA) that must currently be done for all building and renovation projects to only those projects that cost \$10 million or more.
2. Require that armories in correctional facilities have exhaust systems.
3. Modify current requirements for prisoner intake areas.

4. Change the percentage of beds that must be dedicated to each security level.
5. Add exceptions to climate control requirements so that warehouses, industrial spaces, and mechanical and electrical spaces will not have to be heated and air conditioned.
6. Change requirements for special purpose cells, such as isolation, medical, and segregation cells, so that localities can build 20% of these cells at a less than maximum security level (current standards allow 10% lower security cells). These changes will also allow localities to install flushing floor drains instead of toilets in cells designed for violent or self-destructive prisoners and build cuff slots in doors for enclosed showers in special purpose housing units.
7. Change recreational space requirements so that facilities must only have 10 square feet of recreational space for each inmate for a facility designed to accommodate up to 480 inmates rather than up to the currently required 500 inmate capacity.
8. Reduce the number of noncontact visiting spaces from one per every 12 inmates to one per every 20 inmates and allow up to 75% of noncontact visitation to be off-site (video) visitation.
9. Increase the minimum size of kitchen space from 10 square feet for each prisoner up to 100 prisoners of rated capacity and three square feet for each prisoner in the rated capacity over 100 to a minimum of 1,500 square feet and three additional square feet for each prisoner over 100 in the rated capacity. The board also proposes to require that facility kitchen areas include a staff dining or break room.
10. Require facilities with three or more stories to have at least two elevators with secure local control.
11. Require electronic sound monitoring systems that allow prisoners to notify staff of emergencies, intercoms at security doors, and video monitoring of blind spots in corridors, sally ports, building entrances, and building exteriors.
12. Require that there be at least one plumbing valve to shut off water supplies in each housing unit and additional shut-off valves for each special purpose and intake cell.
13. Require noise abatement material for housing, activity, and intake areas.
14. Prohibit magnetic locks as they are not secure during power outages and are generally less secure than other available alternatives.
15. Prohibit tank-type toilets.

Issues: The existing regulation is out of date and the promulgation of replacement chapter 6VAC15-81 is intended to update the current planning, design, construction, and

reimbursement standards to comply with the Code of Virginia, current fire and building codes, audit standards, and current correctional practice. This regulation will improve public safety and provide for a safe environment for staff and offenders. Building a new jail facility is a rare opportunity in the career of local authorities; this chapter incorporates the experience from many projects to serve as an informative guide to make best use of public resources to build safe, secure, and durable facilities.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Corrections (Board) proposes to repeal its regulation that sets standards for constructing local correctional facilities and replace it with a regulation that updates standards to reflect changes in the Code of Virginia, uniform statewide building and fire codes and best building practices for correctional facilities.

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

Estimated Economic Impact. The current regulation governing construction standards of local correctional facilities was promulgated in 1994 and modified in 2009. Since that time, there have been many changes to the Code of Virginia (COV), the uniform statewide building code (USBC) and fire code regulations and to best practice standards for correctional facilities. In order to bring this regulation into conformity with existing requirements in law and in other regulations, the Board now proposes to repeal the current regulation and replace it with a new regulation.

Many of the changes that the Board proposes for the new regulation do not change current building requirements as those requirements are set by either the COV or the USBC and fire code regulations. For instance, Americans with Disabilities Act (ADA) requirements for new construction and renovation of existing buildings are set in the USBC. The Board proposes to harmonize their construction standards with the USBC by providing for ADA accessible cells. Changes such as these that harmonize this regulation with other existing legal requirements will likely not cause any entities to incur any additional costs. Affected entities will benefit from these changes as they remove or change language that conflicts with current law and, therefore, might lead to confusion.

Many other changes that are proposed by the Board are meant to clarify regulatory requirements that may have been incomplete or confusing. For instance, current regulatory language that governs libraries services were written in 1994 and anticipates that such services would include a mobile book cart. Technological changes that allow prisoners to choose from all available books in a facility (rather than just being able to choose from the number of books that would fit on a cart) have made mobile book carts obsolete. The Board now proposes to replace language referencing mobile book



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carts with language that requires "alternative library services" for prisoners who cannot access a facility's library. Changes like this that are designed to update and clarify requirements will likely not cause any entity to incur costs. These changes will benefit interested parties as they make the regulation easier to understand.

The Board also proposes numerous substantive changes for the replacement regulation they are promulgating. Specifically, the Board proposes to:

1. Limit value management analyses (VMA)<sup>1</sup> that must currently be done for all building and renovation projects to only those projects that cost \$10 million or more. The Board proposes this change because it has concluded that projects smaller than \$10 million are unlikely to save enough money on account of the VMA to justify the cost. Board staff estimates that this change will save localities completing smaller projects between \$50,000 and \$100,000 because they will not have to pay for a VMA.
2. Require that armories in correctional facilities have exhaust systems. Board staff reports that the typical cost for an exhaust system to be installed in an armory is approximately \$1,000. The costs for this change are likely outweighed by the benefit of increased safety that will accrue to correctional facility staff because the exhaust system will vent out any leaking or accidentally dispersed chemical agents (mainly, tear gas).
3. Modify current requirements for prisoner intake areas. Currently, facilities must have one intake bed for every 10 beds of rated prisoner capacity. The Board proposes to keep this ratio for the first 400 bed of design capacity but allow facilities with a rated capacity of greater than 400 beds to only have one intake bed for every 40 beds of rated capacity over the first 400 beds. This change will likely decrease the costs of building or renovating larger facilities although Board staff does not have an estimate for the magnitude of those cost savings.
4. Change the percentage of beds that must be dedicated to each security level. Currently, facilities are required to be 20% maximum security, 40% medium security and 40% minimum security. The Board proposes to change these ratios so that facilities are 30% maximum security, 40% medium security and 30% minimum security. Board staff reports that requiring more maximum security beds, which have larger cells than other security levels, will increase construction costs but that those costs will be partially or completely offset by another proposed change that allows slightly smaller medium security cells. This change will benefit localities as it allows them to house prisoners in more appropriate (and therefore safer) cells.
5. Add exceptions to climate control requirements so that warehouses, industrial spaces and mechanical and electrical spaces will not have to be heated and air conditioned. These exceptions will allow localities that

are building or renovating correctional facilities some cost savings because they will not have to build these areas so that they are heated and cooled and will also not have to incur additional ongoing energy costs for heating and cooling these areas.

6. Change requirements for special purpose cells (isolation, medical and segregation cells) so that localities can build 20% of these cells at a less than maximum security level (current standards allow 10% lower security cells). These changes will also allow localities to install flushing floor drains instead of toilets in cells designed for violent or self-destructive prisoners and build cuff slots in doors for enclosed showers in special purpose housing units. Board staff reports that increasing the percentage of lower security special purpose cells will save localities some building costs. Other changes to special purpose cell requirements are expected to increase both prisoner and staff security.
7. Change recreational space requirements so that facilities must only have 10 square feet of recreational space for each inmate for which the facility is designed up to 480 inmates rather than up to the currently required 500 inmate capacity. Localities that are building or renovating larger facilities will likely see some costs saving from having to build and secure 200 fewer square feet of recreational area.
8. Reduce the number of non-contact visiting spaces (from one per every 12 inmates to one per every 20 inmates) and allow up to 75% of non-contact visitation to be off-site (video) visitation. Board staff reports that the costs of installing and maintaining video equipment will be more than offset by lower staff costs associated with not having to process visitors so that they do not bring in contraband and not having additional guards for contact visits. Changing visitation in this way may also increase staff and inmate security by reducing incidences of potentially dangerous contraband making its way into facilities.
9. Increase the minimum size of kitchen space from a minimum of 10 square feet for each prisoner up to 100 prisoners of rated capacity and three square feet for each prisoner in the rated capacity over 100 to a minimum of 1,500 square feet and three additional square feet for each prisoner over 100 in the rated capacity. The Board also proposes to require that facility kitchen areas include a staff dining or break room. Board staff reports that these changes will increase building costs but the additional kitchen area will allow facilities to better accommodate the multiple menus now required to meet religious, allergy and therapeutic dietary needs. Additionally, having a staff dining or break room will allow localities to better accommodate staff who are not allowed for safety reasons to eat at their workstations.

10. Require facilities with three or more stories to have at least two elevators with secure local control. Board staff reports that this will slightly increase construction/renovation costs for larger facilities but will also provide the benefit of greater operational flexibility and security.

11. Require electronic sound monitoring systems that allow prisoners to notify staff of emergencies, intercoms at security doors and video monitoring of blind spots in corridors, sallyports,<sup>2</sup> building entrances and building exteriors. Board staff reports that these requirements will increase cost but will allow these facilities to comply with the federal Prison Rape Elimination Act and will increase safety for both prisoners and staff.

12. Require that there be at least one plumbing valve to shut off water supplies in each housing unit and additional shut off valves for each special purpose and intake cell. Board staff reports that these changes will increase costs but will also facilitate contraband recovery and reduce nuisance flooding. These changes will also allow staff to limit the areas affected by necessary water cut offs which will reduce prisoner unrest that has the potential to put staff at risk.

13. Require noise abatement material for housing, activity and intake areas. Board staff reports that localities will have control over the type and quality of noise abatement material so the magnitude of costs will vary greatly from project to project. Staff also reports that this change is aimed at increasing security and decreasing the stress that noisy, echoing spaces can cause for both staff and prisoners.

14. Prohibit magnetic locks as they are not secure during power outages and are generally less secure than other available alternatives. Board staff reports that this change is not expected to increase costs for localities.

15. Finally, the Board proposes to prohibit tank-type toilets. Board staff reports that there is a negligible difference between the cost of tank-type toilets and the cost of tankless toilets but that the lids and various rods and levers inside tank-type toilets can be used as weapons. Banning this type of toilet will likely increase staff and prisoner safety.

Although Board staff did not have costs estimates for most of the substantive changes to this regulation, the benefits in increased safety and efficiency for facilities are large enough that they likely exceed those unquantified costs.

**Businesses and Entities Affected.** These proposed regulatory changes will affect localities that build or renovate local correctional facilities either separately or as part of a regional building effort. Currently, there are 75 local correctional facilities in the Commonwealth.

**Localities Particularly Affected.** Localities that build or renovate local correctional facilities will be 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.** Some of these proposed regulatory changes are likely to increase real estate development costs for building local correctional facilities and some of these proposed regulatory changes are likely to decrease real estate development costs for building local correctional facilities.

**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 may see some cost increases for building or renovating local correctional facilities. Any cost increases must be weighed against expected long term cost savings that may occur as well as anticipated benefits in greater efficiency and enhanced prisoner and staff safety.

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

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<sup>1</sup> Value management analyses are studies done of proposed facility design for the purposes of ensuring that the design satisfies functionality requirements and is cost-effective. Such analyses also seek to ensure quality and efficiency for the project.

<sup>2</sup> A sallyport is a secure vestibule constructed of secure walls, a secure ceiling, and secure floor with two or more interlocking secure doors.

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

**Summary:**

*The proposed regulatory action repeals the existing Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (6VAC15-80) and replaces it with a new regulation 6VAC15-81. The*

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*proposed new regulation updates standards to reflect (i) changes in the Code of Virginia and uniform building and fire codes and (ii) best practices for correctional facilities.*

## CHAPTER 81

### STANDARDS FOR PLANNING, DESIGN, CONSTRUCTION, AND REIMBURSEMENT OF LOCAL CORRECTIONAL FACILITIES

#### **6VAC15-81-10. (Reserved.)**

#### **6VAC15-81-20. Definitions.**

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

"Acceptable" means those applicable standards or practices with which a registered professional architect, engineer, or other duly licensed or recognized authority must comply.

"Access openings" means panels or doors used for access into areas including ceilings, pipe chases, plumbing chases, or shafts.

"Accessible by inmates" means the same as "inmate accessible."

"ADA accessible" means in compliance with the Americans with Disabilities Act (42 USC § 12101 et seq.).

"ADP" means average daily population.

"A/E" means the architect or engineer and his associated firm hired by the owner for study, design, or construction of the jail project.

"Analysis" means a detailed examination of the local or regional criminal justice system and its elements in order to determine the impact these elements have had on the need for current and future jail space.

"Approved" means an item approved by the reviewing authority.

"Artificial light" means light other than natural light.

"ASTM" means the American Society for Testing and Materials, the most current edition. When ASTM is referenced, the reference is to the Standards in ASTM Standards on Detention and Correctional Facilities, unless otherwise specified. Testing for compliance with ASTM Standards shall be performed by an independent nationally recognized testing laboratory.

"Board" means the Virginia State Board of Corrections.

"Building code" means Virginia Uniform Statewide Building Code (13VAC5-63), the Virginia Industrialized Building Code (13VAC5-91), and the Virginia Statewide Fire Prevention Code (13VAC5-51).

"CCJB" means Community Criminal Justice Board.

"CCTV" means closed circuit television or electronic surveillance system.

"Ceilings" means overhead interior surface that covers the upper limit of an interior room or space.

"Cell" means a space, the size of which are specified in this chapter, enclosed by secure construction containing plumbing fixtures and usually a bunk in which an inmate is detained or sleeps. Cells can be single or multiple occupancy depending upon custody level.

"Cell tier" means levels of cells vertically stacked above one another within a housing unit.

"Central intake unit" means an area constructed to provide, at a minimum, space for intake, temporary holding, booking, court and juvenile (if approved for juveniles) holding, classification, and release functions.

"Classification unit" means a cell or unit utilized for short-term holding of inmates for classification purposes after intake or booking and prior to being assigned to general population or other housing.

"Community based corrections plan" or "CBCP" means a comprehensive assessment of an owner's correctional needs and how these needs will be met through submissions of a needs assessment and a planning study.

"Community custody" means inmates incarcerated by the judicial system and classified for involvement in local work forces; participating in work, education, and rehabilitation release; and weekend and nonconsecutive sentencing.

"Construction completion" means the construction of the building is considered complete when a certificate of occupancy or temporary certificate of occupancy is issued for the building to be occupied by inmates.

"Construction documents" means the detailed working drawings and project manual containing detailed specifications and other supporting documents as approved by the reviewing authority.

"Contact visiting" means a space where inmates and visitors at a minimum may pass papers to one another.

"Control room" means a space enclosed by secure walls, secure roof or secure ceiling, and secure floor from which a jail officer may supervise inmates and control security systems in a portion of the jail, such as locks, doors, etc.

"Control station" means a space not enclosed by security walls, roof or ceiling, and floor from which a jail officer may supervise inmates and control security systems in a portion of the jail, such as locks, doors, etc.

"Correctional facility" means the same as "local correctional facility."

"Dayroom" means a secure area contiguous to an inmate sleeping (cells or rooms) area, with controlled access from the inmate sleeping area, to which inmates may be admitted for daytime activities.

"Department" means the Department of Corrections.

"Design capacity" means the maximum number of general beds for which the facility is designed and constructed based on the space requirements in this chapter as established by the Board of Corrections.

"Direct supervision" means a specific style of management where correctional officers are stationed fulltime inside the dayroom rather than solely observing inmate activity from within secure control points. Within this concept, services are generally brought to the inmate rather than taking the inmate to the service.

"Direct visual observation" means direct line of sight by a correctional officer, not CCTV.

"Dormitory" means an area designed for accommodating five or more inmates and used to house minimum custody and community custody inmates.

"Encapsulation" means the same as "secure encapsulation."

"Expansion" means to add an area of new construction to an existing local correctional facility by constructing additional areas.

"Facility" means a jail or lockup including all associated buildings and site.

"50% completion" (of construction value) means the day the project reaches the 50% point between the issuance of a building construction permit and the issuance of the final certificate of occupancy.

"General population housing" means maximum, medium, minimum, and community custody housing. General population excludes special purpose cells and intake or booking.

"Glazing" means any infill material, usually transparent or translucent glass, polycarbonate or combination thereof, and related components, used in a framed assembly.

"Holding" means a space or room designed for temporary containment of detainees or inmates while awaiting actions such as transfer, transportation, release, etc. Holding of this nature usually does not exceed four hours.

"Housing unit" means a group of single person cells, multi-occupancy cells, or group of such cells with a common dayroom, dormitory, intake, special purpose, or classification areas that provide accommodations for sleeping, approved personal effects, and personal hygiene.

"IMC" means intermediate metal conduit.

"Indirect supervision" means supervision method other than direct supervision.

"Inmate" means any person committed to a jail by a legal commitment document.

"Inmate accessible" means areas an inmate occupies or utilizes inside the secure perimeter, including all sally ports.

"Intake" means a cell, group of cells, and open seating within a jail designed to hold one or more persons while awaiting processing, booking, classification, or to the general housing units after booking. Intake holding time does not usually exceed 72 hours. Cells holding more than one person are frequently referred to as group holding.

"Interior partition" means a wall within the secure perimeter, which is not required to be a perimeter security wall or an interior security wall.

"Interior security walls" means walls within but not a part of a secure perimeter that are utilized to restrict movement within the secure area, including housing units, dormitories, corridors, inmate activity areas, intake area, kitchen, laundry, and program areas.

"Jail" means the same as "local correctional facility."

"LIDS" means LIDS-VACORIS, the Compensation Board's inmate data system.

"Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in the case of an emergency situation.

"Light" means the same as "artificial or natural light."

"Local correctional facility" means any jail, jail farm, or other place used for the detention or incarceration of adult inmates, excluding a lockup, which is owned, maintained, or operated by, or under contract with, any political subdivision or combination of political subdivisions of the Commonwealth. This shall also include facilities operated by a private entity under contract with a regional jail authority under provision of § 53.1-71.1.

"Locality" means a county or city.

"Lockup" means a facility, separate from a jail facility, operated by or for a local government for detention of persons for a short period of time as stated in 6VAC15-40-10.

"Master control" means the principal secure room of the entire facility where the control of safety and security of the jail through electronic equipment for surveillance, communication, fire and smoke detection, and emergency functions. This room is enclosed by walls, roof or ceiling, floor assemblies meeting secure perimeter requirements as well as having opening protectives meeting ASTM Grade I requirements. This room includes control of the entrances to the jail through the secure perimeter and capability of control of ingress and egress to cells, dayrooms, corridors, and other spaces within the entire jail.

"Maximum custody inmates" means persons who cannot be allowed to mingle physically with other inmates without close supervision, normally because of assaultive and aggressive behavior or high escape risk.

"Medium custody inmates" means those persons who require a moderate level of staff supervision and secure accommodations against escape, but who can be allowed to participate in group activities.

"Mezzanine" means the same as "cell tier."

"Minimum custody inmates" means those inmates classified as not dangerous or likely to escape, but who are of sufficient concern to require a minimum level of supervision.

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"Minor renovation project" means renovation project that does not result in an increase in beds and has an estimated cost of less than \$1 million.

"Multiple occupancy cell" means a cell designed for two, three, or four inmates.

"Natural light" means light provided by sunlight as viewed from within a housing unit.

"Needs assessment" means an evaluation of trends and factors at the local or regional level affecting current and future facility needs, and the assessment of resources available to meet such needs. The needs assessment is used as the basis for a request for reimbursement of local correctional facility construction costs.

"New construction" means to build, expand, or replace a local correctional facility.

"Operating capacity" means the same as "design capacity."

"Owner" means the locality, localities, or jail authority responsible for making decisions about the project.

"Owner's agent" means the person or firm designated by an owner to make decisions concerning the project.

"Per inmate" or "per bed" means for each general population bed.

"Piping" means pipes associated with heating, cooling, condensate, domestic water, gas, steam, sewer, storm drain, roof drain, and fire protection.

"Planning study" means a document providing the anticipated operating program, staffing, operating costs, building design, and cost for construction, expansion, or renovation of a local correctional facility that is used as the basis for a request for funding of project costs for reimbursement and initial determination of compliance with this chapter.

"PREA" means the Prison Rape Elimination Act (Public Law 108-79).

"Project" means new construction, renovation, or expansion of a regional or local jail correctional facility. This includes planning, design, and construction.

"Public" means all persons with the exception of professional visitors, such as legal, clergy, counselors, pretrial, probation, parole, and law enforcement, and others as authorized by the local correctional facility.

"Regional jail" means, for purposes of state reimbursement for construction costs, those jails that meet the criteria set forth in §§ 53.1-81, 53.1-82 and 53.1-95.2 of the Code of Virginia, and jail having at least three member localities that was created before February 1, 1993, or any jail construction project recommended for approval by the Board of Corrections as a regional jail prior to February 1, 1993. For the purposes of this term, "created" means localities having submitted resolutions of local governing bodies or cooperative agreements, and "cooperative agreements" means a formal contract between those jurisdictions participating in

a regional jail that specifies their mutual financial and legal obligations relating to the ownership, administration, and maintenance of the jail.

"Renovation" means the alteration or other modification of an existing local correctional facility or piece of equipment for the purpose of modernizing or changing the use or capability of such local correctional facility or equipment. Renovation does not include work on or repair or replacement of any part of an existing local correctional facility or equipment, which may be generally associated with normal wear and tear or included in routine maintenance. Renovation renders the facility, item, or area in compliance with this chapter and superior to the original.

"Repair" means the correction of deficiencies in a local correctional facility or of equipment, which have either been damaged or worn by use but which can be economically returned to service without replacement.

"Replacement" means the construction of a local correctional facility in place of a like local correctional facility or the purchasing of like equipment to replace equipment that has been so damaged or has outlived its useful life that it cannot be economically renovated or repaired.

"Reviewing authority" means the representatives of the Department of Corrections or the Department of Criminal Justice Services responsible for reviewing required documents and attending required meetings and whose responsibility it is to interpret and determine compliance with this chapter.

"Sally port" means a secure vestibule constructed of secure walls, secure ceiling, and secure floor with two or more interlocking, secure doors. Fixtures within sally ports shall be maximum security.

"Secure," as relates to construction, means walls, floors, ceilings or roofs, doors, and windows are constructed in accordance with the secure construction requirements of this chapter.

"Secure area" means all spaces located within the secure perimeter. (See secure perimeter).

"Secure encapsulation" means protect against vandalism or damage with concrete, masonry, steel, or other approved secure construction meeting the requirements of this chapter.

"Secure enclosure" means secure walls, secure floors, and secure roof or secure ceiling surrounding a space or area.

"Security cap" means secure protection of the top of a room or space with concrete, sheet metal, or security ceiling as specified in this chapter to complete the secure encapsulation of the room or space.

"Secure perimeter" means the outer limits of a jail or lockup where walls, floor, roof, and ceiling, constructed in accordance with the requirements of this chapter, are used to prevent egress by inmates or ingress by unauthorized persons or contraband.

"Special purpose cells" means cells within the secure perimeter that include isolation, segregation, medical, protective custody, or other special use cells.

"State responsible inmates" means those inmates with felony sentences and sentenced to the custody of the Department of Corrections in accordance with § 53.1-20 of the Code of Virginia or other applicable state law.

"Supervision" means the act or process of performing responsible care over inmates.

"Support services areas" means all areas within the facility excluding inmate housing units. Also known as core or core space.

"Sustainable design and construction initiatives" means balancing economic, environmental, and equity considerations by reducing negative environmental impacts of site selection and development, optimizing the energy and water performance of the building and site, using environmentally sensitive building materials, and protecting the health and comfort of building occupants. Sustainable design and construction initiatives are benchmarked by third-party rating systems such as LEED or Green Globes or by documenting compliance with ASHRAE 189.1 or the International Green Construction Code.

"Tier" means the same as "cell tier."

"Value management analysis" or "VMA" means an analysis of facility design for the purpose of satisfying required function, and cost effectiveness, while providing the best quality and efficiency for the project.

"Value management team" means a team of people independent from the owner or the owner's A/E headed by a certified value specialist and a combination of the following disciplines based on phase and nature of the project: architecture, security, civil or site engineering, mechanical and electrical engineering, and cost estimator.

"Vehicular sally port" means a drive-in or drive-through made secure preferably by remotely controlled electrically operated interlocking doors for entrance and exit. It is normally located in close proximity to the facility intake.

### **6VAC15-81-30. (Reserved.)**

### **6VAC15-81-40. Expansions or renovations.**

Expansions or renovations to any facility shall conform to the requirements of this chapter for new construction without requiring the existing portion of the facility to comply with all requirements of this chapter. Exception: Those areas in an existing facility that are impacted by an expansion (such as the adding of bedspace impacting the need for more space in the kitchen, visiting, recreation, etc. if these services are not provided for in the expansion) may be required to be upgraded. The maximum upgrade required would be to provide additional space that would be required for the number of people for whom new bedspace is being built.

### **6VAC15-81-50. Localities with multiple facilities.**

For localities with jail facilities having multiple facilities, compliance with this chapter shall be determined based on all facilities as a whole as well as the needs and functions of each individual facility.

### **6VAC15-81-60. Review and inspections.**

Review of documents by the reviewing authority, fire official, local building official, and other officials or agencies shall be required. These reviews are performed at the preliminary and construction document stages. A final inspection shall be performed and documented in writing by all officials and agencies involved in the review process. The reviewing authority's review and inspections shall be limited to those areas within the scope of the project.

### **6VAC15-81-70. Conflict between this chapter and building codes or other standards.**

In the event of a conflict between this chapter and building codes or other standards, the most restrictive requirement shall apply.

### **6VAC15-81-80. Compliance.**

A. The facility shall be designed and constructed in accordance with this chapter. It shall be the responsibility of every person who performs work regulated by this chapter, including those involved with planning, design, construction, renovation, or installation of a structure or equipment, to comply with this chapter. Review or inspection by the reviewing authority does not relieve the owners or their agents from the requirement to comply with this chapter.

B. Definitions in this chapter are a part of the requirements of this chapter.

C. Any agreement entered into by the owner to design or construct a local correctional facility shall include the requirement to comply with this chapter. This compliance shall be noted on the construction documents.

### **6VAC15-81-90. Modifications.**

A. Any request for modification shall be submitted, separate from the planning study, in the form of a request and resolution from the jail authority or board, city council or board of supervisors to the reviewing authority sufficiently in advance of the deadline for submission to the Board of Corrections to be reviewed, analyzed, and included in the desired Board of Corrections meeting agenda. The request for modification shall include a detailed analysis supported by documentation and historical data to justify the request.

B. A staff analysis shall be prepared by the reviewing authority for each modification request. The staff analysis shall include the section of this chapter being modified, an analysis to determine whether or not the modification meets the intent of the section being modified, an analysis of whether the modification has been granted in the past or has any ramifications that might affect current or future jail

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construction or security, and the analysis shall include a staff recommendation to the board.

C. Upon consideration, the board may grant modifications to any of the provisions of this chapter provided the spirit and intent of this chapter is observed and inmate, staff, and public welfare, safety, and security are not compromised. The board has the ultimate responsibility to grant modifications to this chapter and shall not be bound by the position of staff and shall also consider information provided by the locality or localities. The final decision of the board on any modification shall be recorded in board minutes.

## Part II

### Submission of a Community Based Corrections Plan

#### Article 1

#### General

#### **6VAC15-81-100. Document submission schedule and method.**

A. Prior to preparation of a community based corrections plan (CBCP) as required by § 53.1-82.1 of the Code of Virginia, any city or county or combination thereof intending to seek reimbursement for a jail project shall contact the Department of Corrections, Compliance, Certification, and Accreditation Unit to have a meeting to discuss the requirement of completing a CBCP.

B. All documents in this section shall be submitted to the department in accordance with the budgeting time schedule as outlined in § 53.1-82.3 of the Code of Virginia or the appropriation act.

C. Documents shall be as follows:

1. Needs assessment. Four paper copies and one electronic copy of the community based corrections plan, prepared in accordance with this article, shall be submitted to the Department of Corrections, Compliance, Certification, and Accreditation Unit. A needs assessment is not required for projects that do not increase bed capacity and for which the owner does not seek state reimbursement for construction, staffing, or operating cost.

2. Planning study. Three paper copies and one electronic copy of the planning study, prepared in accordance with this article, shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

3. Minor renovation project. Three paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290 shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit. A needs assessment is not required for minor renovation projects that do not increase capacity.

4. Modifications. Three paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290

shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

5. Resolution and cooperative service agreement. Two paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290 shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

An executed cooperative service agreement, where applicable, and resolution shall be submitted to the reviewing authority prior to board consideration of the project. The owner shall submit the following to the Department of Corrections, Compliance, Certification, and Accreditation Unit:

a. Single locality facility. An ordinance or resolution of the local governing body requesting reimbursement funding.

b. Multijurisdictional facility not qualifying for regional jail status reimbursement pursuant to § 53.1-81 of the Code of Virginia. A joint resolution of or individual resolutions from the local governing bodies requesting reimbursement funding.

c. Regional jail board or jail authority facility. Pursuant to § 53.1-81, a joint resolution of or individual resolutions from the governing bodies of the established regional jail board or a resolution from the regional jail authority requesting reimbursement funding and a cooperative service agreement detailing the financial and operational responsibilities of the participating jurisdictions or jail authority.

6. Financing method. If the project is being financed, detailed information on the financing and financing method shall be provided to the Treasury Board in accordance with its requirements.

7. The reviewing authority shall verify documentation has been received by required deadlines and are correct, and advise the locality of any errors or discrepancies in their submittal.

#### **6VAC15-81-110. Community based corrections plan requirement.**

An owner requesting reimbursement for new construction, expansion, or renovation, staffing, or operating cost of a jail project that results in a net increase of available beds shall prepare and submit for approval a community based corrections plan.

#### **6VAC15-81-120. Local responsibility for community based corrections plan.**

A. The community based corrections plan shall be developed by the owner or owners, or an agent of the owner or owners. Pursuant to § 9.1-180 of the Code of Virginia, the community criminal justice board (CCJB) shall review the findings and recommendations of the needs assessment component of the community based corrections plan.

B. Oversight and amendment by CCJB is limited to the following situations:

1. Where a multijurisdictional CCJB, established in accordance with the provisions of § 9.1-178 of the Code of Virginia, has membership of the governing bodies of jurisdictions not involved in the construction, expansion, or renovation of the regional jail project, a subcommittee shall be established comprised of the required members of the CCJB representing the participating jurisdictions and their governing bodies.

2. In those projects in which more than one locality is involved and each locality has a separate CCJB or the localities are members of different multijurisdictional CCJBs, a subcommittee shall be established comprised of the required members of the CCJB representing the participating jurisdictions and their governing bodies.

**6VAC15-81-130. Community based corrections plan contents.**

A community based corrections plan includes:

1. A needs assessment for projects increasing rated capacity by more than 24 beds or more than 40% of rated capacity, whichever is less per 6VAC16-81-40 through 6VAC15-81-90.

2. A planning study per 6VAC16-81-40 through 6VAC15-81-90.

**6VAC15-81-140. Localities not operating a jail.**

For a locality not currently operating a jail, the needs assessment portion of the community based corrections plan shall be based on how the locality is managing its current inmate population through utilization of other local correctional facilities and community based alternative programs and services. Localities requesting reimbursement for new single jurisdiction jail or regional jail construction must comply with current appropriation act language.

Article 2

Contents of the Community Based Corrections Plan

**6VAC15-81-150. Needs assessment.**

A. The needs assessment is an evaluation of trends and factors at the local or regional level affecting current and future facility needs, and the assessment of resources available to meet such needs that is used as the basis for a request for reimbursement of local correctional facility construction costs.

B. The needs assessment shall address each of the elements of 6VAC15-81-160 through 6VAC15-81-260.

**6VAC15-81-160. Funding priority.**

The needs assessment shall include a statement identifying which Board of Corrections funding priority or priorities the plan and jail project addresses, per 6VAC15-81-320.

**6VAC15-81-170. Analysis of criminal justice and inmate population data.**

A. The needs assessment shall include an analysis of criminal justice and inmate population data as required by this chapter.

B. In order to evaluate the impact of the various criminal justice components on the jail population, the following data shall be provided for each locality participating in the needs assessment for the most recent five calendar years.

1. A table and an analysis of annual trends for the total adult arrests for Part A and B offenses from the latest edition of "Crime in Virginia" published by the Virginia State Police.

2. A table and an analysis of annual trends fort total adult arrests currently defined as "On View," "Taken into Custody," and "Summonses" and a comparison of these totals to those presented in subdivision 1 of this subsection. This data is available from the Research Unit of the Virginia Department of Criminal Justice Services.

3. A table and an analysis of annual trends for process data from the Supreme Court of Virginia from the Magistrate Information System including the total number of:

a. Bonds.

b. Commitment orders - bail.

(1) Felony.

(a) Secured.

(b) Unsecured.

(c) Recognizance.

(d) Held without bail.

(e) Release by judicial officer to custody of responsible person or when accused is no longer intoxicated.

(2) Misdemeanor.

(a) Secured.

(b) Unsecured.

(c) Recognizance.

(d) Held without bail.

(e) Release by judicial officer to custody of responsible person or when accused is no longer intoxicated.

(3) Release orders.

4. A table and an analysis of annual trends for data from the State Compensation Board Local Inmate Data System (LIDS).

a. Total new "Pretrial Monthly Commitments" by month and by felony, and misdemeanor or ordinance violators for those awaiting trial. This report is available on the State Compensation Board website under "LIDS, the Forms Maintenance Menu" for individual jails or from any local pretrial services agency that currently serves the jail or jails in question.



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b. Comparison and analysis of the total number of new "Pretrial Monthly Commitments" in subdivision 4 a of this subsection, with the total "Commitment Orders" in subdivision 3 b of this subsection.

c. A separate report of the total number of "Pretrial Commitments" in subdivision 4 a of this subsection above that were released for the following LIDS "Reason Release Codes":

(1) 19 – To bond.

(2) 49 – To pretrial service program.

d. Report of the total annual commitments "Serving Sentence" separately by misdemeanor and felony, for the following LIDS "Reason Confined Codes":

(1) 20 - Serving sentence.

(2) 29 - Weekend or nonconsecutive days.

(3) 26 - Work release.

e. Reports of the admissions in subdivision 4 d of this subsection, report the number released for the following LIDS "Release Reason":

(1) 16 - Time served.

(2) 33 - To Department of Corrections.

(3) 39 - Sentence served.

5. A table and an analysis of total average monthly adult ADP for the most recent 60 months by felony, misdemeanor, and ordinance violation categories for local responsible populations and for felony state responsible populations. Data is available from the State Compensation Board website under LIDS.

6. A table and an analysis of annual trends for identification of the following subpopulations separately:

a. The "overflow" population being held in another jail or jails.

b. The ADP help for:

(1) Federal authorities.

(2) Out-of-state authorities (non-state warrant).

(3) Other localities including payment agreements, courtesy holds for other localities, and exchange agreements. This does not include prisoners held in accordance with regional jail service agreements or jointly operated facilities.

(4) State responsible inmates held by agreement, jail contract bed or JCB or work release.

c. Localities currently without facilities can calculate the average daily population from total prisoner days reported for prisoners held for their locality by another jail or jails (use Federal Information Processing System Code in LIDS for specific locality or localities involved).

7. A table and an analysis of annual trends for total placements by felony and misdemeanor, where applicable,

for the following services for each jurisdiction in the project served by the following agencies:

a. Agency.

(1) Pretrial service agency.

(2) Community based probation services agency.

(3) State adult probation and parole district office (probation cases only).

(4) Drug courts.

b. For pretrial and local community based probation services, the average daily caseload under supervision based on total supervision days.

c. For all other programs, the average of the total population under active supervision at the beginning and the end of the calendar or fiscal year.

d. For all programs and services:

(1) The total annual placements, where applicable, for misdemeanors and felony defendants and inmates.

(2) A description of each program including fiscal agent, administration and management, staffing, and annual budget or operating costs.

## **6VAC15-81-180. Assessment of existing resources.**

A. The needs assessment shall include an assessment of existing resources, including existing local correctional facilities, any lockups or other community based facilities that reduce the demand on jail space needs, and all pretrial and post-disposition alternatives, programs, and services.

B. The information provided pursuant to subsection A of this section shall include a description of the existing jail or jails in local lockups and correctional facilities that impact the project including:

1. The date of construction and dates of subsequent renovations or expansions;

2. The current rated capacity as established by the Department of Corrections;

3. A table indicating the total number of housing units including cell blocks, dormitories, and other housing units used for general population inmates. The tables for existing facilities shall be set up similar to the example table in subdivision 4 of this subsection.

4. A table indicating the design capacity and the total number of beds for each of the housing areas. The description and calculation of the existing facility's needs shall be consistent for each facility. The tables for the existing facility shall be set up using the following examples:

Example table for subdivisions 3 and 4 of this subsection.

<u>Floor</u>	<u>Unit name</u>	<u>Unit type</u>	<u>#Cells/dorm per unit</u>	<u>DOC op. cap.</u>	<u>Unit op. cap. x sq. ft.</u>	<u>Dayroom op. cap. x sq. ft.</u>	<u>#Perm. beds per unit</u>	<u>Sq. ft. per bed</u>	<u>Dayroom sq. ft./bed</u>
1	<u>Block A</u>	<u>Cell</u>	6	6	<u>6x70=420</u>	<u>6x35=210</u>	<u>6x2=12</u>	<u>35.0</u>	<u>17.5</u>

5. A table indicating the existing square footage available per inmate in each cell, dormitory, and dayroom.

Example table for subdivision 5 of this subsection.

<u>Unit Name</u>	<u>Security/Custody Level</u>	<u>Pop. on (Date)</u>	<u>Total sq. ft. per person in unit</u>	<u>Total sq. ft. per person in dayroom</u>	<u>Total Aggr. sq. ft. per inmate</u>
<u>Cell A</u>	<u>Med</u>	<u>16</u>	<u>26.3</u>	<u>13.1</u>	<u>39.4</u>

6. The total number, type, and capacity of special purpose areas.

7. A statement of the number of stories and aggregate floor space in the facility.

8. A statement about the general condition of the facility and the feasibility of continued future use and, if applicable, the status of the action plan to correct physical plant deficiencies identified in the latest inspection or certification audit report.

9. A description and table depicting administrative, operating, and inmate program space and a description of the impact of the limitations that lack of space, inadequate space, or the design of the facility has on administration, operations, and security.

10. Where applicable, the impact that the holding of juveniles has on the design and operation of the facility.

11. A copy of the most current department inspection report for life, health, and safety and a copy of the most current department certification audit shall be submitted.

12. If the facility is to remain open as a jail, a jail condition assessment on major buildings and building systems shall be performed by a licensed A/E, and costs associated with necessary upgrades shall be provided. The cost of staffing and documentation of staff efficiency for continued operation shall also be provided. Analysis of the condition assessment shall be based on health safety issues, excessive maintenance costs, excessive repair costs, excessive staffing due to design, limited capacity, program space, and distance to other facilities associated with a regional jail.

C. The needs assessment shall include for the last fiscal year, a description of each program and a data table providing the number of placements, the average daily population, and where applicable, the annual number of bed days saved by each jail-based program, and a plan to increase the utilization of the impact of the various criminal justice components on the jail population to include:

1. Jail work force.
2. Work release.

3. Home or electronic incarceration.

4. Weekend sentencing work options.

**6VAC15-81-190. Analysis of existing criminal justice practices.**

A. The needs assessment shall include an analysis of existing criminal justice practices and the impact they have on the use of existing and the need for future jail space, including arrest, bail, pretrial alternatives, commitments, sentencing practices, post-trial alternatives, Department of Corrections probation and parole violators, and state responsible felony inmate populations.

B. A description of the effect of current magistrate; court; public defender; and prosecutorial case management practices, policies, and procedures on the length of stay in jail. Included shall be a plan to improve criminal justice services, to include the staff and other resources necessary to effect a reduction in pretrial and post-dispositional length of stay in jail. Strategies to improve these practices and services shall be included and shall address such factors as:

1. The current use of summonses issued by law-enforcement agencies in lieu of arrest in certain criminal misdemeanor offenses.
2. The current use of unsecured bond or pretrial services by magistrates.
3. Video arraignment in lieu of transportation to court.
4. Specifically for regional projects.
  - a. Cross court arraignments for confined defendants awaiting trial.
  - b. The need and solutions for short term holding of defendants following arrest.
  - c. An assessment of travel distance and times to a proposed regional facility.
  - d. Where applicable, a collocated juvenile detention facility.

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## **6VAC15-81-200. Recommended resources to improve or expand existing and establish new alternatives.**

The needs assessment shall include recommended resources, including the necessary funding, necessary to improve or expand existing and establish new pretrial and post-disposition alternatives.

## **6VAC15-81-210. Impact from the loss of local jails.**

The needs assessment shall include an examination of transportation costs, costs associated with closing of existing facilities, and the impact that the loss of local jails will have on the operation of local sheriff's offices and law-enforcement departments related to the current and future need for:

1. Lockups.
2. Short-term holding.
3. Court holding.
4. Staff availability for law-enforcement activities.

## **6VAC15-81-220. Specific jail population forecast.**

A. The needs assessment shall include a forecast of the future total average daily population as follows:

1. A table of data utilized shall be included in the forecast section and shall be based on a minimum of 60 monthly data points including a description of the timeframes and the unit of analysis.

2. A graph that plots the local responsible inmate and state responsible inmate population separately and a table with the calculation of the percent local responsible and state responsible population during the period of analysis presented in the forecast data base.

3. A calculation of the average percent of the local responsible inmates and state responsible inmates in the total jail population including state responsible inmates greater than 90 days as reported by State Compensation Board.

4. The results of the preliminary population data analysis such as trends and correlation structure.

5. A presentation of three to five forecasts (the specification, parameters, and diagnostic information from each model) selected from any of the following models:

- a. Linear regression analysis.
- b. Exponential smoothing models.
- c. Autoregressive integrated moving average models.
- d. Structural forecasting models (multiple regression analysis).
- e. Other forecasting models preapproved by the reviewing authority.

6. The forecast shall exclude the ADP of detainees:

- a. Held for other localities (includes those held for payment, by courtesy, or for exchange) for jurisdictions not participating in a jointly operated or regional jail, or held in a single jurisdiction jail.

b. Held for federal authorities.

c. Contract inmates.

d. Held for out-of-state authorities (non-state warrant).

B. The needs assessment shall include a forecast consisting of:

1. A year-by-year forecast based on the projected year of occupancy plus a minimum of 10 years.

2. A test of the model selected demonstrating its ability to forecast the most recent year's population.

3. The presentation of a forecast based on one of the models and the discussion of why it was selected for the jail project.

4. An additional 10-year estimate in yearly increments (based on the year of occupancy plus 20 years) for use in estimating the facility support service areas needs in the planning study. For new facilities if future expansion is anticipated, consideration shall be given to increasing support services areas by 50% to accommodate future expansion.

C. The needs assessment shall include the impact of state responsible prisoner population in local jails for each of the last five calendar or fiscal years.

1. The year-to-year growth trend for the state responsible felon population.

2. The percentage of the total for which state responsible population accounted.

3. The mean, median, and mode state responsible population.

D. The needs assessment shall include a report for the last calendar or fiscal year:

1. Separately, the number of inmates committed to jail solely for a probation violation (confinement awaiting probation revocation hearing) or for a parole violation (confinement awaiting parole revocation hearing).

2. The total prisoner days and a calculation of the ADP, separately, for each of the two confinement categories listed in subdivision 1 of this subsection.

3. The total prisoner days or monthly ADP for all state responsible felon inmates calculated from the date of final sentencing to release or transfer to the Department of Corrections.

## **6VAC15-81-230. Analysis of defendant or inmate management practices.**

A. The needs assessment shall include an analysis of the effect that the defendant or inmate management practices of law enforcement, magistrate, court, public defense, prosecution, local and state pretrial and post-trial alternative programs and the Department of Corrections have had on admissions to, releases from, and length of stay in jail.

B. The needs assessment shall include recommendations and agreements to eliminate or reduce the impact on jail bed

space needs and to improve the practices of these services, including procedural changes, staffing, and the budget resources necessary to effect or implement these changes.

**6VAC15-81-240. Program or procedural strategies for reducing the jail population forecast.**

The needs assessment shall include a presentation of the program or procedural strategies for reducing the jail population forecast, which shall be based on strategies for the expansion of existing and the establishment of new programs designed to divert misdemeanor and felon defendants and inmates detained in jail awaiting trial or actively serving sentences or reducing their lengths of stay. The strategies shall include a description of the proposed services, costs for implementing or expanding services, and, if possible, staff and other resources necessary to implement expanded or new programs. Strategies to be considered include:

1. Mental health diversion or alternative programs, services, or facilities.
2. Development or enhancement of a pretrial services agency.
3. Home or electronic incarceration or monitoring.
4. Programs that divert defendants from jail, prosecution, or conviction who have been charged with offenses for which they can receive a sentence to jail.
5. A program that reduces the awaiting trial length of stay through court-approved credit for voluntary work on public property by any adult confined in jail awaiting disposition for a nonviolent misdemeanor or felony offense.
6. Development of or enhancement of local community based probation services for local responsible misdemeanor and felon inmates placed on probation

following a sentence of 12 months or less or following a deferred proceeding.

7. Jail based home electronic incarceration program for inmates actively serving sentence in jail. Sentenced inmates can be confined at home in lieu of being held in jail.

8. A jail based public work force program that reduces the post-disposition length of stay through court approved credit for voluntary work on public property by any adult confined in jail serving a sentence for a misdemeanor.

9. A state or local day reporting center that will divert probation and parole violators from jail.

**6VAC15-81-250. Proposed project.**

A. The needs assessment shall include a table depicting the current jail housing and special purpose spaces in accordance with construction standards at the time that it was built that will be in continued use for the proposed project and the designated spaces proposed for the new construction.

B. The needs assessment shall include the recommended size of the proposed facility including the total number of cells, dormitories, or housing units necessary for general population, and community custody and special purpose housing, if applicable, special purpose, and short population management. This is the number to be used as the "relative size" of the proposed facility as required by 6VAC15-81-290.

C. The needs assessment shall include the proposed facility size based on future estimates and the need for management bed space in accordance with the requirements for design and construction set out in this chapter. Provide information in table shown in the example table in this section.

Bed Distribution: Existing or Proposed						Special Purpose	Temporary Housing
Existing Jail	Rated Capacity	Maximum	Medium	Minimum	Community Custody		
Existing Jail							
Subtotal							
New Facility							
New Facility							
Total							
Grand Total							
Percentage Distribution							

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## **6VAC15-81-260. Conclusions and recommendations.**

The needs assessment shall include conclusions and recommendations for implementation or improvement of programs and services as a part of the recommended jail project.

## **6VAC15-81-270. Needs assessment review.**

A. The Department of Corrections and the Department of Criminal Justice Services shall review the needs assessment for compliance with this chapter and validation of the need for additional beds.

B. The Department of Corrections shall provide to the Board of Corrections a report on its review of the needs assessment for compliance with this chapter and validation of the need for additional beds.

C. The Board of Corrections shall evaluate the needs assessment to determine whether the assessment complies with this chapter and validates the need for the construction, expansion, or renovation project for which reimbursement is requested. The board may approve the needs assessment as presented. The board may require amendments or it may deny approval.

## **6VAC15-81-280. Planning study requirements.**

A. An owner proposing a new construction, expansion, or renovation project shall prepare and submit for approval a planning study in accordance with this article with the exception of those projects qualifying as a minor renovation project as specified in 6VAC15-81-300.

B. The owner or the owner's agent shall contact the Department of Corrections, Compliance, Certification, and Accreditation Unit for guidance in interpreting these procedures and requirements for planning study documentation submissions.

C. The Department of Corrections shall not assist in the preparation of a planning study but may provide guidance and shall respond to requests for clarification of the requirements.

## **6VAC15-81-290. Required information for planning study.**

A. The planning study shall include a statement acknowledging owners' and consultants' responsibilities for compliance with this chapter.

B. The planning study shall include a statement of the planned general population design capacity, as well as the number and capacity of temporary holding and special purpose cells of the proposed facility as detailed and approved in the needs assessment. If the capacity detailed in the planning study deviates from the forecasted capacity need shown in the needs assessment, the proposed interim capacity of the facility and the plan showing future expansion for achieving the approved capacity shall be detailed.

C. The planning study shall include, if applicable, a statement of rated capacity of the existing facility including

current capacity of housing for custody levels, temporary holding, and special purpose.

D. The planning study shall include the operating program.

1. For new facilities, a written operating program describing the operating procedures envisioned for key operational functions such as, but not limited to, intake or release, inmate escorting, movement to and from court, medical, visitation, food services, program delivery, use of proposed technology, and related services such as video arraignment and telemedicine.

2. For renovations and expansions, any changes to the operating procedures shall be provided.

E. The planning study shall include a facility planning program setting forth the project requirements for building space by function, size, and quantity and addressing any special design considerations unique to the project.

F. The planning study shall include site data including site size, availability of utilities, and any other features of the site that would impact the facility design or cost.

G. Localities considering a campus style design concept that is designed to require the inmates to walk outdoors to access multiple buildings on the same site shall submit a written statement to the Board of Corrections detailing the management concept, anticipated staffing levels, and cost savings anticipated in construction and operation of the facility by this concept. Included in this request shall be a list of any specific sections of this chapter or 6VAC15-40 that are in conflict with the proposed facility with this management style and for which modification requests will be submitted. Explanation shall be given of how the security of individual buildings is provided in accordance with this chapter.

H. The owner shall submit a written statement to the Board of Corrections detailing the management concept (e.g., direct supervision, indirect supervision, hybrid, etc.) and anticipated operating procedures for the facility and anticipated staffing levels. Included with this statement shall be a request for modifications of specific sections that are in conflict with the proposed facility management style.

I. The planning study shall include a written description of the project setting forth:

1. The rationale for the building design.

2. The type of construction proposed.

3. A description of basic building materials and systems. (structural; heating, ventilation, or air conditioning; security; etc.).

4. The size of the facility in gross square feet of floor area and size of facility in number of general population beds.

5. Building code designations as to the intended use group or groups, building code occupant loads, occupant load per this chapter, and construction type or types.

6. Provisions for future expansion based on findings in the facility program and needs assessment with number of beds, increased core, and support space.

7. Descriptions of proposed technology and related services.

8. Descriptions of sustainable design and construction initiatives proposed including energy conservation, resource management and environmental enhancements that can be benchmarked by third-party rating systems such as LEED, Green Globes, documenting compliance with ASHRAE 189.1, or the International Green Construction Code. Descriptions shall include benefits to the facility's users, environmental benefits and estimated payback time-frames. Initiatives resulting in an increase in project costs shall be identified and include estimated costs.

9. Identification of specific items or features that increase the project cost of a median or basic jail building.

J. If the original jail is to remain open as a jail, the planning study shall include an assessment of the condition of the jail shall be performed by a licensed A/E, and estimated costs associated with necessary upgrades and phases shall be identified. The cost of staffing and documentation of staff efficiency for continued operation shall also be provided. Analysis of the condition assessment shall address life, health, and safety issues; excessive maintenance costs; excessive repair costs; excessive staffing due to design, limited capacity, program space, and distance to other facilities associated with a regional jail.

K. The planning study shall include conceptual floor plan or plans at a scale not smaller than 1/16 inch per foot, with indication by distinct symbols, overlays, or other means to denote the secure perimeter of the facility.

L. The planning study shall include conceptual building elevations at a scale not smaller than 1/16 inch per foot.

M. The planning study shall include a conceptual site plan at a scale not smaller than one inch per 60 feet indicating existing and proposed buildings, vehicular circulation, parking, outdoor recreation facilities and areas, security fences or walls, and future building expansions.

N. The planning study shall include a conceptual building section at a scale not less than 1/16 inch per foot if required to explain a multilevel building design.

O. The planning study shall include an energy analysis containing comparative fuel costs and energy conservation investigations including construction cost increase and savings, payback energy efficiency initiatives and other factors supporting the heating, ventilation, and air conditioning systems and fuel selection.

P. The planning study shall include an analysis of staffing needs and a six-year operating budget costs for the proposed facility that includes:

1. Security positions indicating type of inmate supervision system proposed, specific security posts required, and anticipated hours that each post will be manned.

2. Nonsecurity staff functions and anticipated hours the posts will be manned.

3. Operating budget costs, with items such as the cost of heating, ventilation, and air conditioning; utilities maintenance; food service; staff salaries; supplies; etc.

Q. The planning study shall include a construction cost estimate with a detailed description of the basis on which the estimate was made:

1. The construction cost estimate shall be based on the estimated cost as of the date of the planning study and shall also show the inflated values of the estimated costs as of the date of the midpoint of construction as proposed in the construction schedule. A chart shall be prepared in column format showing estimated building construction cost. Other costs as individual line items not included within the building envelope shall be added such as, but not limited to site development, professional fees, contingencies, permits, unusual site work, expanded core, and renovation. The estimate shall also show the sum of total project costs.

2. When projects involve a combination of two or more project types (new construction, renovations, and expansions) the construction cost estimate shall clearly identify the costs associated with each project type.

3. When items proposed exceed median construction costs, the construction cost estimate shall clearly identify such costs, and the need for such extraordinary work shall be fully explained and justified including the examination of alternative solutions. Examples of these items may include:

- a. Expanded facility support services.
- b. Unusual site conditions.
- c. Utility runs beyond the limits of construction.
- d. Virginia Department of Transportation turn lanes.
- e. Sustainable design and construction initiatives.

4. When items proposed exceed median construction cost because of local requirement or desires, the work shall be specifically listed and the anticipated additional cost of each item identified. Portions of the project that are not eligible for funding reimbursement shall be clearly identified and costs tabulated separately. These items may include features such as:

- a. Enhancements to meet local zoning or architectural requirements.
- b. Stone facades.
- c. Site constraints because of locations.
- d. Slate roofs.
- e. Retail stores.
- f. Clock towers.
- g. Copper roof.

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h. Marble planters.

i. Brick outdoor recreation yard enclosures.

j. Loose equipment.

k. Inmate transportation tunnels or other passageways to courthouse.

5. In accordance with the Code of Virginia, only fixed equipment is reimbursable except in minimum security housing. Loose equipment or furnishings (i.e., those items not permanently or physically attached to the building) that are not reimbursable include the following items:

a. Blankets.

b. Chairs.

c. Curtains.

d. Desks.

e. Fire extinguishers.

f. Lamps.

g. Mattresses and pillows.

h. Medicines and medical equipment.

i. Movable beds.

j. Movable shelving.

k. Office equipment and furnishings.

l. Portable radios and communication devices.

m. Pots, pans, and utensils.

n. Small portable appliances.

o. Smoke machines.

p. Telephone handsets.

q. Televisions.

r. Uniforms.

s. Vehicles and vehicle equipment.

6. Additional items that are not considered to be eligible for reimbursement as a construction cost include:

a. Space for sheriff's functions unrelated to the operation of the jail.

b. Magistrate's offices.

c. Cost of financing or interest other than that calculated and provided by the Department of Treasury.

d. Land already owned by the owner.

e. Excess land not used exclusively for jail purposes.

f. Owner's operating or administrative budget or expenses.

g. Salary of employees of any locality who is a participant in the jail project.

h. Owner's advertising fees, master planning, consultants, authority or board expense, legal fees, or similar items unrelated to planning, design and construction of the jail.

i. Selection of overly expensive design, building materials, or systems.

j. Repair of existing facility.

k. Oversized utility lines, central plants, or other similar services, onsite or off site, to provide service to facilities other than the jail now or in the future; if a portion of this is deemed reimbursable, it may be approved on a percentage of use by facility basis.

7. Items deducted from project cost:

a. Any money realized or planned to be realized from the sale or transfer of any building or real estate associated with existing jail in order to procure a site and construction of the new jail or expansion shall be reported and shall be deducted from the project cost.

b. Any grants received for construction shall be reported and shall be deducted from the project cost.

R. The planning study shall include a schedule for planning and construction of the project including at a minimum milestone dates for completion of design development drawings, completion of contract documents, start of construction (an executed construction contract and a notice to proceed), midpoint of construction, completion of construction, and projected date of occupancy.

S. The planning study shall include any other information that would be of value to a reviewing agency or the reviewing authority.

T. The planning study shall include a list of the sources of all allocated and projected construction or capital funds involved in the project.

**6VAC15-81-300. Minor renovation projects; required information.**

A. A locality or regional jail proposing a renovation project that does not increase design capacity and for which the cost is less than \$5 million or higher if approved by the board shall submit the following in lieu of the planning study:

1. Identification of the problem, need, or reason for the project.

2. Description of current situation including:

a. Analysis of existing facilities to include space utilization, condition, and capacity of facilities.

b. Determination of existing and recommended facility procedures related to the need.

c. Examination of existing and recommended alternatives to fulfill the need and the feasibility of implementing such alternatives.

3. Detailed written description of the planned project including an analysis of any existing facility function that would be displaced, replaced, or enhanced by the proposed renovation.

4. Statement of who will be responsible for designing, supervising, and accepting the project for the owner.

5. Conceptual floor plans, at a scale not smaller than 1/16 inch per foot, with indication by distinct symbols, overlays, or other means to denote work to be done.
6. Analysis of the project impact on staffing.
7. Analysis of the project impact on operating costs.
8. Analysis of impact on the security of the facility.
9. Total estimated project cost with a description of the basis and a breakdown of the estimate into construction costs, fees, and other expenses.
10. Proposed construction schedule to include anticipated completion date.
11. Other project-specific information as determined by the reviewing authority.

B. Nonreimbursable items as listed in 6VAC15-81-290 Q also apply to minor renovation projects.

Article 3  
Funding and Reimbursement

**6VAC15-81-310. Criteria for board funding recommendation.**

A. The board shall evaluate the need for the project as demonstrated by the information provided in the needs assessment, planning study, or the minor renovation project information.

B. The board shall take into consideration the operational cost efficiency of the interior design of the facility with special concern for the number of security staff required, functional layout, material selection, and utilities costs.

1. Security staffing levels will be generally based on the operational capacity of the facility and in accordance with the staffing ratio requirements of the appropriation act.
2. Any proposed facility requiring a less efficient staffing ratio than the appropriation act requirement shall be justified and approved by the board in order to be considered for reimbursement.

C. Economy of construction cost is necessary and will be reviewed as follows:

1. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the efficiency of the renovated spaces, the appropriateness of the proposed changes, and the relationship of the changes to the project as a whole.
2. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the adjusted median cost of local correctional facilities. The comparison of project costs to the adjusted median cost shall be made utilizing the appropriate estimated construction costs that were based on current cost values.
3. Increases and decreases in funding shall be based on costs listed in the latest edition of "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMeans Company Inc., adjusted for appropriate

variables. When reviewing the construction costs, the reviewing authority may recommend adjustment of the amount being requested for reimbursement funding for the following reasons:

- a. When support service areas of the facility are not included, included at a size not in conformance with this chapter, or are included at sizes larger than necessary in anticipation of future expansion of the facility;
- b. When planned facilities vary from the recommended custody level percentages contained in 6VAC15-81-610 by more than 10% of each custody level;
- c. When construction is proposed for space or spaces to be utilized for inmate industries; or
- d. When site location circumstances warrant consideration.

D. The adjusted median cost of local correctional facilities shall be calculated by the department using national area averages based on the number of beds and the following procedure:

1. For jails housing maximum, medium, and minimum custody inmates, a cost per square foot base figure shall be the national median square-foot unit cost published in the latest edition of "Means Facilities Cost Data" or "Means Square Foot Costs" published by RSMeans Company Inc.
2. For dormitories providing only community custody housing a cost per square foot base figure shall be the national median square-foot cost for college dormitory from the latest edition of "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMeans Company Inc.
3. The national square-foot cost shall be adjusted for applicability to Virginia localities by applying an adjustment factor given for appropriate class of structures in the local building construction multipliers section of the "Marshall Valuation Service Manual" published by Marshall & Swift, latest edition.
4. For the purposes of cost calculations only, the adjusted square-foot costs shall be multiplied by per-bed area allowances based on the national average gross square footage of facilities; the area allowances shall be:
  - a. Facilities housing maximum, medium, and minimum inmates - 400 square feet per bed;
  - b. Community custody housing facilities with 50 or fewer beds - 275 square feet per bed; and
  - c. Community custody housing facilities with more than 50 beds - 250 square feet per bed.

E. The adjusted median state construction cost of local correctional facilities shall be calculated by the Department based on the number of beds and the following procedure:

1. Adjusted median cost for the local correctional facility shall equal:



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a. National cost per square foot multiplied by local modifier multiplied by area allowance per bed as found in "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMeans Company Inc. plus;

b. Additives to the cost must be indicated and justified.

2. The amount recommended for project funding shall not exceed the adjusted median construction cost plus 10% plus other costs as addressed in 6VAC15-81-290, or planning study estimated cost, whichever is less. Costs exceeding the state allowed amount as calculated in 6VAC15-81-290 Q must be borne solely by the owner.

3. Construction cost shall be based on costs as of the midpoint of the construction schedule.

4. The median cost of the local correctional facility is the reasonable cost of items similar to those listed in the cost template shown below:

<u>Cost Analysis</u>		
<u>Name of Jail:</u>		
<u>Date:</u>		
	<u>Locally Requested Cost</u>	<u>Eligible Cost:</u>
<u>Part I - New Construction Costs</u>		
<u>Building cost</u>		
<u>Sitework</u>		
<u>New Construction Cost Subtotal</u>		
<u>Part II - Project Construction Costs</u>		
<u>Building renovation cost (number of square feet and cost per square feet)</u>		
<u>Unusual site conditions</u>		
<u>VDOT access lanes</u>		
<u>Off-site utilities</u>		
<u>Utility relocation</u>		
<u>Project Construction Costs Subtotal</u>		
<u>Part III - Other Project Costs</u>		

<u>A/E fees</u>		
<u>Community based corrections plan/planning study</u>		
<u>Value management analysis</u>		
<u>Construction manager/clerk of the works</u>		
<u>Fixtures, furnishings &amp; equipment</u>		
<u>Communications/data equipment</u>		
<u>Testing/special inspections</u>		
<u>Survey, topo, environmental &amp; utility locator</u>		
<u>Geotech</u>		
<u>Printing, reproduction &amp; advertising</u>		
<u>Permits, fees &amp; connection charges</u>		
<u>Record drawings</u>		
<u>Other Costs Subtotal:</u>		
<u>Contingency Costs (based on total costs less A/E fees and planning study and percentage used):</u>		
<u>Total Project Costs</u>		
<u>Note: Line items are suggested. For example, not all line items may be applicable. However, more line items may be required.</u>		

F. The cost of renovation of an existing facility shall be reviewed on a case-by-case basis and shall be presented in calculations separate from new construction costs.

G. Unless an extension is granted by the board, board approval expires after three years if design development drawings have not been submitted to the reviewing authority. After that time, to proceed with the project, the owner shall resubmit the community based corrections plan to the board for reconsideration.

**6VAC15-81-320. Funding priorities.**

The following criteria, listed in order of importance, shall serve as a guide for determining the level of priority given to requests for reimbursement:

1. Replacement or renovation of bed space lost due to fire, earthquake, or other disaster.
2. Renovation of an unsafe facility that is documented as out of compliance with board life, health, and safety provisions of 6VAC15-40 (Minimum Standards for Jails and Lockups) or a court-ordered renovation, expansion, or new construction.
3. Construction of a regional facility that results in the replacement or closure of two or more local facilities.
4. Expansion of an existing local correctional facility or regional facility experiencing overcrowding that is expected to continue based upon factors described in the needs assessment.
5. New construction for a locality that does not currently have a facility or is not participating in an existing local correctional facility or regional facility.
6. Expansion or renovation of support facilities.
7. Phased construction projects.
8. Construction project cost overruns.
9. Construction by localities that received reimbursement within the previous five years for beds of construction with a limited life span. These localities shall not receive recommendation for approval for replacement of those beds with another secure or community custody facility.

**6VAC15-81-330. Board recommendations.**

A. The department shall direct a letter to the owner notifying the governing body of the board's decision to recommend, or not to recommend, a project for reimbursement.

B. The department shall notify the Department of Planning and Budget and Treasury Board of the board's approvals and approval expirations of proposed jail construction to include project description and reimbursement recommendation amount.

C. Final appropriations are subject to the Governor's approval and legislative enactment.

**6VAC15-81-340. Reimbursement rates.**

The reimbursement rates to localities for construction, expansion, or renovation of local correctional facilities shall be governed by §§ 53.1-80 53.1-81, and § 53.1-82 of the Code of Virginia.

**6VAC15-81-350. Required forms.**

Upon project approval by the board, the owner shall be responsible for obtaining and submitting all forms as required by the Treasury Board if the project is to be funded by the Treasury Board.

Part III  
Project Development

**6VAC15-81-360. Project development; reviewing authority.**

The reviewing authority determines adequacy of the usability, functionality, acceptable design relationship, flows, and sightlines of the design of the facility. With the exception of receiving a modification granted by the board, the reviewing authority is the final determination in interpretation of and compliance with this chapter.

**6VAC15-81-370. Schematic design documents.**

A. The owner shall submit schematic design documents to the reviewing authority as specified in this section.

B. The schematic design documents required for an expansion, renovation, or new construction of a local correctional facility shall contain sufficient information to identify basic security construction features and demonstrate intent to comply with this chapter and building code requirements and shall include, as a minimum, the following:

1. The schematic design shall include a basis of design narrative that provides the following information:
  - a. General and special purpose capacity and type of occupancy.
  - b. Exterior circulation to include pedestrian and vehicular.
  - c. Outline description of basic materials including systems, equipment, and proposed finishes for major areas to include administration, inmate housing, inmate programs, kitchen, laundry, receiving, medical, etc.
  - d. Future construction or expansion to be accommodated.
  - e. Style and character of building desired.
  - f. Environmental considerations, if any.
  - g. A geotechnical report.
  - h. A description of the HVAC systems being used, including the goals for energy efficiency and for the smoke removal systems.
  - i. Total square footage per floor and per building.
  - j. Number of parking spaces.
  - k. Total estimated construction cost based on the schematic documents with a description of the basis on which the estimate was made.
  - l. Any changes to the board approved total project budget.
  - m. Any changes in staffing from the board approved planning study.
2. The schematic design shall include schematic drawings that provide the following information:
  - a. A table showing type of construction proposed. Building designations as to building code edition used, standards to be met, fire resistive characteristics,

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intended use group or groups, use condition, gross square footage, design occupancy loads, and construction types.

b. Schematic site plan.

c. Floor plans consisting of single line drawings at a scale not smaller than 1/16 inch per foot, showing each floor layout with space names, nominal room square footage, circulation paths, and security walls (interior and exterior).

d. Longitudinal building section with floor to floor to ceiling dimensions.

e. Exterior elevation views (minimum of two).

f. Any other information that would be of value to the reviewing authority.

## **6VAC15-81-380. Design development documents.**

A. The owner shall submit design development documents to the reviewing authority as specified in this section.

B. The design development documents required for an expansion or new construction of a local correctional facility shall contain sufficient information to identify basic security construction features and demonstrate intent to comply with this chapter, 6VAC15-40, and building code requirements and shall include, as a minimum, the following:

1. Site plan.

2. For new and existing facilities, a table showing the construction type, the size of the facility in gross square feet of floor area, building code designations as to code edition, fire resistive characteristics, intended use group or groups, condition, and design occupancy loads.

3. Architectural floor plans at least 35% complete at a scale not less than 1/8 inch per foot, showing each floor layout complete with space names, nominal room square footage, circulation paths, secure perimeter, interior security walls, and fire walls.

4. Elevations, sections, and details as required to define building materials and security construction features.

5. Mechanical and electrical plans and specifications necessary to define life safety construction features.

6. Security equipment list.

7. Outline specifications.

8. Construction cost estimate.

9. Any change in staffing from planning study.

C. Documents for renovation of a local correctional facility may not require some of the information in subsection B of this section. Requirements shall be as determined by the reviewing authority in consultation with the owner or owner's agent or engineer. In the case of renovations qualifying as minor renovation projects under 6VAC15-81-300, determination of required documents and information shall be made by the reviewing authority in consultation with the person or persons responsible for project design.

D. The owner shall submit two sets of design development documents to the Department of Corrections, Compliance, Certification, and Accreditation Unit. The owner may also be required to submit design development documents to other regulatory agencies as deemed appropriate at this stage and shall be so notified in writing by the department.

E. The reviewing authority shall review design development documents for compliance with applicable codes, this chapter, and commonly accepted architectural, engineering, and correctional practices.

1. Changes to design development documents may be required. If so, the reviewing authority shall ensure that all changes and comments shall be submitted in writing to the owner.

2. The owner or owner's agent shall respond in writing to the reviewing authority to all comments in the design development review. Necessary revisions to the project documents may be incorporated in the submission of the construction documents. All issues in question between the owner or owner's agent and the reviewing authority shall be resolved before the construction document phase is begun.

## **6VAC15-81-390. Value management analysis.**

A. All jail projects for which reimbursement is being requested for new construction, expansion, or renovation costing \$10 million or more shall have a value management analysis (VMA) performed during design. For renovation projects, a waiver may be requested from the board.

B. VMA shall be performed at the conclusion of the design development (35% to 40% complete) phases of the project design. For large projects in excess of 250 beds, the reviewing authority may require that a second phase of VMA be performed at the construction documents phase (90% to 95% complete).

C. The VMA shall involve a three-day to four-day exercise at the design development phase, or four to five days each at the design development and construction document phases. The first day, or portion thereof, of each analysis consists of a presentation overview by the owner and the A/E design team to the value management team. The final day or portion thereof, consists of a presentation of findings and recommendations by the value management team to the owner and A/E design team and attended by the reviewing authority.

D. The VMA process shall analyze at a minimum the following aspects of the project's design: systems, products and materials, quality, efficiency, functionality, long-term design, and operational needs (beyond 10 years) and cost.

E. The owner shall engage the services of a qualified value management team, as defined in the definitions and headed by a certified value specialist or engineer pursuant to the definitions. The VMA team shall be independent of the A/E design team and of the contractor. Cost estimators are also

recommended as beneficial to the analysis, particularly for projects performing VMA at the construction documents phase.

F. The owner shall advise the reviewing authority in writing at least 15 working days in advance of the meeting dates for the VMA team. A representative of the reviewing authority shall be present at the value management team's formal presentation of results to the owner and A/E design team. The reviewing authority may attend any other portion of the session.

G. Upon completion of the VMA process, a summary report detailing VMA recommendations and the owner's decision on implementation of the recommendations shall be provided in writing to the reviewing authority.

#### **6VAC15-81-400. Construction documents.**

The owner or owner's agent shall submit two complete sets of construction documents, one full size, one half size, plus one set of full-size architectural drawings to the reviewing authority, Department of Corrections, Compliance, Certification, and Accreditation Unit as specified in this section.

1. Complete sets of construction documents shall consist of:

- a. Construction documents (at least 95% complete).
- b. Bidding documents.
- c. Cost estimate.
- d. Construction schedule.

2. Review approvals from local building, health, and fire officials.

3. The reviewing authority shall review construction documents for compliance with this chapter, building and fire code requirements, and incorporation of all changes required by the reviewing authority at the design development document review stage.

- a. Changes to the construction documents may be required. All required changes and recommendations shall be submitted in writing to the owner or owner's agent.
- b. The owner or owner's agent shall respond to all comments in the construction document review in writing to the reviewing authority. All issues in question between the owner or owner's agent and the reviewing authority shall be resolved before the project is bid.

4. Upon satisfactory resolution of all review comments, construction documents shall be approved by the reviewing authority, and the owner shall be advised in writing.

5. The approved plans shall not be construed as authority to omit or amend any of the provisions of this chapter except when a modification is granted by the board.

#### **6VAC15-81-410. Changes and delays.**

A. If, during the project, there is any substantive change in the scope of the project, major design change, an increase in the estimated cost of construction exceeding 10%, or any change in the security staff requirements exceeding 10%, the review process shall be suspended until the project is resubmitted to the board for further review and possible change in the status of reimbursement recommendation.

B. Unless an extension is granted by the board, board approval expires after two years if design development drawings have not been submitted to the reviewing authority. After that time, to proceed with the project, the owner shall resubmit the community based corrections plan to the board for reconsideration.

C. Increases in reimbursement funding over the initial amount approved by the board may be considered based on analysis of documentation of bid overage or contract increase, negotiation for cost reduction, and justification for the increase. See 6VAC15-81-430. Increases in the cost of construction above the board approved amount shall be documented, justified, and submitted for board approval. Notification shall be provided to the board of the intent to request increased reimbursement prior to 35% completion of construction. The request for board approval with complete documentation and justification shall be made prior to 50% construction completion.

D. The board shall not approve any request for reimbursement for increases in the cost of construction for any project for which construction was not begun within three years of enacted approval of funding for the project by the General Assembly; provided however, the board may approve such requests if the increased costs resulted from extraordinary circumstances, which must be documented.

E. Final appropriations for increases are subject to the Governor's approval and legislative enactment.

#### **6VAC15-81-420. Bids.**

A. Prior experience with jail construction is an element to be considered when selecting a contractor.

B. After bids for construction have been received and opened, and the owner has determined to proceed with the project, the owner or owner's agent shall submit a copy of the bid tabulation to the reviewing authority.

C. For projects utilizing nontraditional process, other than design-bid-build, the schedule of values shall be submitted within 45 days after award of the construction contract.

#### **6VAC15-81-430. Construction.**

A. To be eligible for reimbursement, the quality control must be independent of the owner. Quality control may be provided by a clerk of the works, construction manager, or by enhanced construction administration by the architect with reports submitted directly to the owner.

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B. Any change ordered during the construction phase affecting security, safety, compliance with this chapter, or cost shall be submitted to the reviewing authority in writing.

C. Representatives of the department may visit the project site during the construction period to observe the work in progress. Any observed deviations from the approved documents having the effect of voiding or reducing compliance with this chapter or building or fire code requirements shall be reported in writing to the owner and shall be corrected.

D. Inspections by the reviewing authority shall start at 50% construction completion with at least one additional inspection prior to final inspection. The owner or owner's agent shall notify the reviewing authority and request inspections in a timely manner.

## **6VAC15-81-440. Final inspection.**

A. The reviewing authority shall inspect the facility after substantial completion and prior to acceptance by the owner. This inspection shall be requested by the owner or owner's agent and coordinated with the reviewing authority.

B. Upon completion of the final inspection by the reviewing authority, and corrective actions as required, the owner shall provide to the reviewing authority copies of all regulatory agency letters verifying approval by others of the completed project.

C. Corrective actions taken to resolve comments made by the reviewing authority during final inspection shall be provided by the owner or owner's agent in writing to the reviewing authority.

## **6VAC15-81-450. Record documents.**

The owner or owner's agent shall modify original construction contract documents to reflect the condition of the project as actually constructed and based upon as-built drawings and specifications provided by the general contractor. Such modifications shall include change orders, sketches, addenda, and field clarifications. These documents shall be marked as record documents.

### **Part IV** **Reimbursement**

## **6VAC15-81-460. Method of reimbursement.**

A. Reimbursement to an owner shall be affected through one of three methods. Reimbursement shall be made through one lump sum payment or two lump sum payments or in payments over a specified period of time. The General Assembly determines and approves the method of reimbursement upon evaluation of the jail construction project by the Department of Planning and Budget in consultation with the Treasury Board.

B. Project closeout documentation and request for reimbursement shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit, within six months after construction completion.

C. Failure to comply with this chapter shall delay the review process and recommendation for disbursement of funds and may result in the denial of reimbursement.

D. Project closeout documentation shall be reviewed for completeness and accuracy by the reviewing authority prior to recommendation to the Governor and authorization to the Comptroller or Department of Treasury for issuance of reimbursement payment. The owner or owner's agent shall be notified by the reviewing authority if information is missing, invalid or inaccurate or needs clarification. Such further information requested shall be provided prior to authorization of payment.

E. Project closeout shall be complete upon receipt of all properly prepared final documentation as specified in 6VAC15-81-480 and reimbursement has been made.

## **6VAC15-81-470. Request for interim lump sum reimbursement.**

If interim lump sum reimbursement has been legislatively approved, when construction of the project is 50% complete and payment in two lump sums has been authorized, the following shall be submitted:

1. Schedule of values and calculations confirming 50% completion.
2. Copies of bills and verification of payment (canceled checks or other means of verification as accepted by the reviewing authority) along with copies of original estimated costs to verify payment of 50% of those items for which reimbursement is being requested at that time.
3. Interim affidavit of payment of claims.
4. Further information as deemed necessary by the reviewing authority.

## **6VAC15-81-480. Final lump sum reimbursement closeout documentation.**

If lump sum reimbursement has been legislatively approved, when the project is finished at the local level, the owner shall submit the final documentation listed in this section. Final reimbursement may be requested when the project is complete. The project shall be considered complete when the owner has completely submitted the following items accurately and with all supporting documentation:

1. Project completion report (forms or instructions are provided by the reviewing authority).
2. Final schedule of values (forms or instructions are provided by the reviewing authority).
3. Copies and verification of payment of all bills pertaining to the project for which reimbursement is being requested.
4. Letters from regulatory agencies verifying their inspection and approval of the completed project.
5. Building official's certificate of occupancy.
6. Fire official's concurrence.
7. Health official's approval.

- 8. Affidavit of payment of claims.
- 9. 50% completion date and documentation substantiating the date.
- 10. Verification and certification using industry benchmarks that substantiate that the sustainable design and construction initiatives identified in the planning study have been achieved, if applicable.
- 11. Verification of correction of the reviewing authority's punch list items or other deficiencies;
- 12. Copies of all change orders.
- 13. Closeout documents (drawings and specifications) that shall be submitted to the reviewing authority in accordance with the following:
  - a. One set on CD media: copy of record documents on CD-ROM media, or electronically stored data shall be in a pdf format.
  - b. One set of operation and maintenance manuals for systems provided to the owner shall include all color coding and point-to-point wire run lists for all electrical systems.

**6VAC15-81-490. Treasury Board reimbursement.**

- A. When the construction and closeout of a project being reimbursed by contract with the Treasury Board is complete, the owner shall submit all information as required in 6VAC15-81-480 to the reviewing authority in the Department of Corrections, Compliance, Certification, and Accreditation Unit.
- B. An owner approved for reimbursement in payments over a specified period of time shall be paid in accordance with a contractual agreement entered into with the Treasury Board.

Part V

Secure Local Correctional Facilities Design and Construction

Article 1

General Design Requirements

**6VAC15-81-500. Secure local correctional facilities design and construction - general.**

- A. When designing the facility, consideration shall be given to appropriate traffic patterns, groups of functions, facilitating ease of movement to and within functions, clear sightlines to reduce blind spots, efficiency and economy of staffing, PREA, and facilitating a smooth, logical sequence of operation.
- B. The reviewing authority may accept materials and systems documented to be equivalent to those required by this chapter.
- C. Any deviation requiring a modification or variance of this chapter shall be submitted for review by the reviewing authority and approval by the Board of Corrections.
- D. In addition to the minimum requirements, this chapter contains recommendations regarding design, construction,

and security that, although not required, should be given serious consideration.

E. The reviewing authority may make recommendations regarding design, construction, and security that, while exceeding minimum requirements, may be desirable to adopt.

F. Review or inspection by the reviewing authority does not relieve the owner or owner's agent from the requirement to comply with this chapter.

**6VAC15-81-510. Separation of males, females, and juveniles.**

A. Secure housing units, intake cells, and special purpose cells shall be designed and constructed to ensure physical separation and to prohibit normal sight or sound communication between males and females.

- 1. "Secure housing" means housing for all inmates (maximum, medium, and minimum) not classified as community custody.
- 2. If the facility is designed to hold juveniles, the areas used for juveniles shall be designed to prohibit normal communications by sight and sound and ensure physical separation of the juvenile from the adult population.

B. Separation of internal movement of juveniles shall be in accordance with 6VAC15-40, Minimum Standards for Jails and Lockups.

**6VAC15-81-520. Traffic patterns.**

A. If secure and community custody housing are provided in the same building, the design of the facilities shall provide traffic patterns to assure the separation of secure and community custody inmate populations.

B. Design of public access shall be such that the public does not enter into the secure perimeter of the facility, and the traffic pattern for the public shall be separate from that of inmates.

C. The reviewing authority may require that intake, release, and court holding areas be separate and distinct functions and traffic patterns be kept separated from each other. The reviewing authority may require that means of egress for the inmate release area and for the court holding area be separate from the intake and booking area entrance.

D. Exterior pedestrian and vehicular routing shall be designed for separation of traffic patterns.

**6VAC15-81-530. Related areas.**

The following areas shall be outside the secure perimeter

- 1. Magistrate offices and law-enforcement lobby (if provided).
- 2. Parking.
- 3. Public visitation and waiting area.
- 4. Armory.
- 5. Maintenance shop (if provided).
- 6. Main (primary) mechanical room.

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7. Vehicular sally port.

## **6VAC15-81-540. Administration.**

A. The jail shall provide space consistent with the size of the facility for administrative, program, and clerical personnel.

B. Space shall be provided within the secure perimeter for the shift or watch commander's office, counselor's office, and other offices that the jail operation requires.

C. Space shall be provided for staff break or dining. Locating staff break or dining within the secure perimeter shall be considered.

## **6VAC15-81-550. Public areas.**

A. Public areas of the facility shall be located outside the secure perimeter. Public access to the building shall be through a main entrance. The general public shall not have access inside the secure perimeter of the jail. Traffic patterns of the public and inmates shall be distinct, separate, and not intersect.

B. A reception and waiting area with appropriate informational signage shall be provided for the public and shall be so situated that it does not interfere with the administrative office operations. The public waiting area shall include sufficient seating, drinking fountains, toilet facilities, and weapons lockers equipped with individually locked compartments. Consideration shall be given to provision for public lockers.

C. All exterior areas, including parking, shall be adequately lighted.

## **6VAC15-81-560. Secure perimeter.**

The secure perimeter of the facility shall be composed of a complete and continuous security envelope consisting of walls, roofs, ceiling, floors, doors, door locks, and other hardware, windows and glazing constructed in accordance with the security perimeter requirements of this chapter. The secure perimeter shall be clearly indicated on the plans.

## **6VAC15-81-570. Interior security walls, interior partitions.**

A. Interior security walls shall be provided around and between all housing units, cells, dormitories, armories, sally ports, central intake units, classification units, control rooms, recreation areas, kitchens, inmate dining halls (if separate from housing), canteens (commissaries), multipurpose rooms with toilets, central laundry, laundry chemical rooms, pharmacies, medical units, records rooms within the secure perimeter, and property rooms. Interior security walls, and opening protectives shall be constructed in accordance with 6VAC15-81-930.

### B. Interior partitions

1. Interior partitions may be provided between support services such as but not limited to multipurpose rooms without adjacent toilets and staff dining.

2. Interior partitions shall not be substituted for required interior security walls.

3. Interior partitions shall be constructed in accordance with 6VAC15-81-930.

## **6VAC15-81-580. Exterior areas.**

A. Exterior areas, including parking and building exterior where CCTV is utilized, shall be lighted as recommended by the equipment manufacturer.

B. When landscaping, consideration shall be given to size and density of plantings within 25 feet of the building for security and fire safety reasons.

## **6VAC15-81-590. Fencing.**

A. Security fencing or security walls shall be provided for outdoor recreation areas. Exterior building configurations that create containment areas and all other areas shall be fenced as required by this chapter.

B. Access for maintenance shall be provided for all fenced areas.

## **6VAC15-81-600. Emergency containment.**

A. Alternate means for inmate containment shall be provided for in case of disaster, mass arrests, or emergency evacuation.

B. These areas may include outdoor recreation area, an enclosed vehicular sally port, or any other approved area that shall afford adequate security.

C. When planned for this purpose, these areas shall provide access to toilets and drinking water. Fixtures and equipment shall meet the requirements for temporary holding.

## **6VAC15-81-610. Armory.**

A. Secure storage for security equipment, restraining devices, firearms, chemical agents, etc. shall be located outside the secure perimeter and convenient to security personnel responding to emergency situations.

B. Walls, floor, opening protectives, and roof or ceiling of this area shall meet requirements for secure construction.

C. This area shall have a dedicated exhaust system.

## **6VAC15-81-620. Pedestrian sally ports.**

A. sally ports shall be provided at any point the secure perimeter of the building is penetrated unless specifically exempted by this chapter.

B. sally ports shall be provided at all exterior openings from security areas and at the entrances to housing units designed for maximum and medium security inmates.

C. Any stairwell with a door that penetrates the secure perimeter shall be constructed as a sally port.

D. For an emergency exits only, an exterior area enclosed with bar grille or woven rod may serve as the second barrier of a sally port. This sally port shall be provided with a top barrier at least equivalent to the vertical enclosure fence mesh and the area is supervised by CCTV.

E. Exterior security doors used solely to meet emergency evacuation requirements are not required to be sally ported,

however, fencing the area to be utilized for evacuation is required if no sally port is provided.

F. Commercial grade sectional doors or overhead rolling doors are not considered secure and shall not be part of a sally port.

G. Consideration shall be given to providing weapon lockers equipped with individually locked compartments at the entry of staff and law-enforcement sally ports penetrating the secure perimeter.

### **6VAC15-81-630. Vehicular sally port.**

A. The vehicular sally port shall be provided with weapons lockers equipped with individually locked compartments.

B. Vehicular sally ports shall be weather protected. As a minimum the lower eight feet of the vehicular sally port walls shall be solid. This sally port shall be separated from adjacent spaces by secure and fire-rated construction and shall be observable by staff with CCTV as backup. If this sally port is to be used for emergency containment, an upgrade of the security level shall be considered.

#### Article 2

#### Central Intake Unit Design, General Population, and Other Areas Design Requirements

### **6VAC15-81-640. Intake and processing.**

A. The central intake unit shall be located within the secure perimeter of the facility, outside the general population housing units and shall be separated from other areas by an interior security wall.

B. The central intake unit shall be constructed to provide the following areas:

1. Booking or processing, including photographing and fingerprinting.
2. Clothing storage and issue.
3. Control room or station.
4. Custody transfer.
5. Intake cells and group cells.
6. Interview.
7. Medical screening.
8. Orientation.
9. Property storage.
10. Provisions for telephone calls.
11. Records storage (if not provided elsewhere).
12. Release and staging for court (if applicable).
13. Strip search and shower.
14. Video arraignment if arraignment is not provided elsewhere.

C. Intake cells and group areas.

1. Space shall be provided for intake of inmates at a minimum of one for every 10 inmates for which the facility is designed up to the first 400 beds of design capacity.

a. Intake cells, group cells, and open seating shall be provided at a ratio of one for every 40 beds of additional design capacity above 400.

b. Consideration shall be made for future expansion.

c. At least 50% of this required capacity shall be single cells with the remainder being a combination of group cells and open seating area. Exception: The number of single cells may be reduced based on approved statistical documentation or needs identified in the needs assessment.

2. Intake cells shall be designed to contain a minimum of 45 square feet for single occupancy cells plus 15 square feet per inmate for each additional inmate for which the cell is designed.

3. Each cell shall contain at least one stationary bench or bunk, hot and cold running water, a combination stainless steel toilet and lavatory with push button metering activators, and a sanitary bubbler.

4. Intake cells shall provide optimized observation of the interior of the cell. Modesty screening is required for toilets in cells with grillage or glazed openings greater than a total of 120 square inches in any cell wall. Exception: An observation cell with flushing floor drain and a bunk sized slab or platform raised a minimum of six inches above floor for sleeping is not required to have a toilet, lavatory, or privacy screening.

5. Lighting in cells, toilets, and showers shall be provided from a maximum security fixture of sufficient intensity to permit sight supervision.

6. Natural light and dayrooms are not required for intake cells or areas.

7. Intake cells shall be constructed as maximum security cells with maximum security doors, hardware, fixtures, equipment, and glazing or bar grille woven rod or combination thereof.

8. Toilets and lavatories shall be provided for use by those in open seating holding. Plumbing fixtures in this area shall be maximum security.

9. Showers shall be provided as follows:

a. For facilities with a design capacity of 200 or less: a minimum of two showers.

b. For facilities with a design capacity of 201 or more: a minimum of one additional shower for every 300 beds, or portion thereof, of additional design capacity.

D. Nonperimeter entrances and exits for the intake and release area shall be capable of being controlled from intake or local control. Security perimeter doors shall be controlled from master control only.



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E. Secure storage space for inmate personal property shall be provided adjacent in proximity to the intake or release area.

1. The recommended amount of space is four to six inches of linear hanging space per inmate for which the facility is designed plus one cubic foot in bins or lockers, per inmate, for items that cannot be hung.

2. Consideration shall be given to providing washers and dryers in this area.

F. Release and court holding.

1. Consideration shall be given to separation of traffic patterns and additional holding for inmate release area and for court holding.

2. Number of cells shall be as defined in the needs assessment.

3. Egress for these areas shall be separate from the area serving the intake and booking entrance.

G. Temporary juvenile holding, pursuant to § 16.1-249 G of the Code of Virginia, if provided, shall be as follows:

1. Construction of juvenile cells or units shall be in accordance with this chapter as required for maximum security adult housing.

2. This ward or unit shall be physically, audibly, and visually separated from adult areas.

H. Consideration shall be given to future expansion.

## **6VAC15-81-650. Security levels of housing.**

A. Secure housing shall be constructed to provide housing for maximum, medium, and minimum custody inmates. Consideration shall be given to the mental health needs of inmates which may require dedicated housing areas with additional space for mental health professionals, treatment, and counseling. "Secure housing" means housing for all maximum, medium, and minimum inmates not classified as community custody.

1. The basic distribution of custody levels is expected to be 30% maximum, 40% medium, and 30% minimum or may vary based on documentation provided in the needs assessment.

2. Female housing shall consist of at least two separate units of which at least 50% of the female design capacity is medium security or higher.

3. Up to 25% of minimum custody may be community custody. Community custody beds do not require construction of special purpose cells.

B. Maximum security housing units shall be designed as groupings of single cells with dayrooms to afford protection for persons requiring maximum supervision.

1. The number of inmates per housing unit shall depend upon the degree of surveillance and security provided, but for facilities designed for an occupancy of 240 or fewer inmates, the unit shall be designed not to exceed 24

inmates per housing unit. For facilities designed for an occupancy in excess of 240 inmates, the number of occupants for which the unit is designed may be increased but shall not exceed 48 inmates per unit. A minimum of two maximum security housing units shall be provided. For indirect supervision facilities, all units shall be provided with direct visual observation from a control room. For direct supervision facilities, the reviewing authority may require that units be provided with direct visual observation from a control room.

2. 20% to 25% of maximum security cells may be dedicated as a classification unit. The classification unit shall be located in proximity to the intake unit. Consideration shall be given to male and female population. The classification unit shall include at least one private interview room, office space for classification personnel, medical room, and record storage.

C. Medium security housing units shall be designed as single, double, or four-inmate cells with common dayroom. The owner shall determine the number and type of cells per housing unit. The owner shall determine the number and type of cells per housing unit; however, no less than 30% of these cells shall be designed for single occupancy. These units shall be designed to accommodate no more than 64 inmates per housing unit for direct supervision or 48 inmates per housing unit for indirect supervision. At least two housing units shall be provided. For indirect supervision facilities, the reviewing authority may require that all units provide direct visual observation from a control room.

D. Minimum security housing units shall be designed as dormitories or multiple occupancy cells. Minimum security areas shall be designed to accommodate no more than 48 inmates per housing unit in dormitories or 64 inmates per unit with multiple occupancy cells. At least two housing units shall be provided.

E. Community custody facilities shall be constructed in accordance with Part VI (6VAC15-81-1130 et seq.) of this chapter. Consideration should be given to male and female populations.

F. Juvenile housing.

1. If the facility is to hold juveniles, housing units shall be physically, audibly, and visually separated from adult areas to prohibit adult and juvenile communication in accordance with the "Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention (OJJDP) Act of 2002," published by OJJDP in October 2010. Showers, personal hygiene, and dressing areas shall be designed to comply with PREA.

2. Juvenile housing units shall provide general purpose housing designed and constructed in accordance with maximum security requirements of this chapter.

**6VAC15-81-660. Cells and dayrooms.**Maximum and medium security:

1. All single cells shall be sized in accordance with the latest edition of the American Correctional Association Standards for Adult Local Detention Facilities and have a ceiling height no less than eight feet. Single occupancy cells, with the exception of special purpose cells, shall be configured to open into a dayroom or activity space.

2. Multiple occupancy cells shall be designed for no more than four inmates per cell and shall be sized in accordance with the current American Correctional Association Standards for Adult Local Detention Facilities concerning multiple occupancy cells and have a ceiling height of no less than eight feet. Multiple occupancy cells shall be configured to open into a dayroom.

**6VAC15-81-670. Cell requirements.**

A. All cells shall be enclosed within secure walls, floor, and ceiling, as specified in this section, and shall include secure opening protectives. Each cell shall be provided with artificial light, toilet and lavatory fixtures with metering push button activators, hot and cold running water, a security type mirror mounted at standard height, a stationary bed or bunk and storage.

B. Maximum security cells shall have maximum security walls, maximum security doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 1 requirements.

C. Medium security cells shall have interior security walls surrounding each housing unit meeting a minimum of ASTM Grade 2 requirements; however, the walls separating individual cells may be interior partitions.

D. Minimum security cells shall have walls, doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 3 requirements.

**6VAC15-81-680. Dayroom requirements.**

A. Dayroom space shall contain no less than 35 square feet of space for each inmate for whom the unit is designed to serve. Calculation of this space shall not include sally ports, visitation booths, stairs, area under stairs, toilet, shower, and lavatory areas. On the first level an 18-inch wide path in front of all cell fronts, toilets, and showers, and the tiered walkway in front of upper level cells shall not be counted as dayroom space.

B. Each dayroom shall be equipped with a shower, toilet, lavatory with hot and cold running water activated by metering push button activators, and a drinking fountain or the lavatory equipped with sanitary bubbler. Fixtures shall be security type in accordance with the security level for which the unit is designed.

C. Stationary security type tables and dayroom seating shall be provided in maximum and medium security areas of the facilities designed for indirect supervision. Stationary

security type tables and seating shall be provided for facilities designed for maximum security with direct supervision. Tables and seating for medium security direct supervision living areas may be loose but shall be designed for detention facilities and be fire retardant and vandal resistant. In accordance with the Code of Virginia only fixed equipment is reimbursable and loose equipment is not considered reimbursable except in minimum security housing.

D. Tables and seating shall be sufficient to accommodate the number of inmates for whom the area is designed.

E. Stairs in multilevel dayrooms shall have open risers.

F. If a housing unit is provided with an ADA accessible cell, the dayroom toilet shall be provided with an ADA accessible fixture.

G. Showers and toilets shall be located to provide visual supervision from a control station or control room and to provide privacy from the housing unit occupants and from visibility from circulation corridors. Showers, personal hygiene, and dressing areas shall be designed to comply with PREA.

H. If video visitation monitors are provided in the dayroom, they shall be positioned to maximize privacy for both the visiting inmate and visitor.

**6VAC15-81-690. Dormitory requirements.**

A. Dormitories shall have walls, doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 3 requirements.

B. All dormitories shall be constructed to provide 85 square feet of space per inmate for each inmate for whom the area is designed. The 85 square feet associated with dormitory space is normally separated into 50 square feet for sleeping and 35 square feet for activity. Calculation of this space shall not include sally ports, stairs, area under stairs, toilet, shower, and lavatory areas.

C. All dormitories shall be provided with artificial light, toilet and lavatory fixtures, hot and cold running water, and a drinking fountain or lavatory equipped with sanitary bubbler, security type mirrors at standard height, tables, and chairs or benches in sufficient number to accommodate the dormitory's design capacity.

D. Tables and seating shall be sufficient to accommodate the number of inmates for whom the area is designed.

E. Showers and toilets shall be located to provide visual supervision from a control station or control room as well as privacy from the housing unit occupants and from visibility from circulation corridors.

F. Stairs in multilevel dormitories shall have open risers.

**6VAC15-81-700. Natural light.**

Natural light is required in general population housing units in new construction. Consideration shall be given to

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providing natural light in renovation projects that provide new inmate housing.

## **6VAC15-81-710. Artificial light.**

A. Artificial light shall be provided in all cells, dayrooms, and dormitories to provide at least 20 foot-candles at personal grooming areas, tables, and desk tops, if desks are provided. Night lighting is required.

B. Light fixtures used within the secure perimeter shall be equivalent to the security level of the area in which they are designed.

## **6VAC15-81-720. Climate control.**

Heat and air conditioning shall be provided in all rooms in the facility so that a temperature not less than 65 degrees F or more than 85 degrees F is maintained. Exceptions to this requirement include warehouses, industrial spaces, and mechanical and electrical spaces, which may be mechanically ventilated. Special consideration shall be afforded to additional cooling in kitchen, food storage areas, and rooms containing heat sensitive and electronic equipment.

## **6VAC15-81-730. Equipment and fixtures.**

Equipment and fixtures used within the secure perimeter shall be equivalent to the security level of the area in which they are designed.

## **6VAC15-81-740. Special purpose cells.**

A. There shall be a minimum of one special purpose cell (e.g., isolation, medical, or segregation) for each 10 secure inmates for whom the facility is designed.

B. The number of ADA accessible special purpose cells shall meet the percentage required by the building code.

C. All cells shall be provided with lighting from a maximum security fixture and be in accordance with artificial light requirements in 6VAC15-81-710.

D. Special purpose cells shall be sized in accordance with the American Correctional Association Standards for Local Detention Facilities for restrictive housing units with a ceiling height of at least eight feet and are not required to open onto an adjacent dayroom space.

E. A minimum of 80% of special purpose cells shall be constructed as maximum security cells. Up to 20% of special purpose cells may be of less secure construction if designed for medical usage.

F. Cells specifically designed for persons who are violent or self-destructive may be equipped with a flushing floor drain in lieu of a stainless steel combination plumbing fixture and a bunk sized slab or platform raised a minimum of six inches above finished floor.

G. Showers shall be provided within the special purpose housing unit. Consideration shall be given to providing cuff slots in doors for enclosed showers in special purpose housing units.

H. Special purpose cells shall not open directly into a main corridor or general population activity space.

## **6VAC15-81-750. Multipurpose space.**

A. Multipurpose spaces shall be provided in sufficient number and size to allow for and include multipurpose rooms, educational classrooms, religious services, group counseling services, program services, and library (if inmates are to be moved to the service). For purposes of this chapter, jail industry programs, as defined in §§ 53.1-133.1 through 53.1-133.9 of the Code of Virginia, are not considered multipurpose space.

B. The total multipurpose area square footage shall be designed and constructed to provide a minimum of 20 square feet per inmate for design capacity of the facility up to 480 inmates. No additional multipurpose space is required for facilities with a design capacity of over 480 inmates.

## **6VAC15-81-760. Recreation.**

A. Recreation space shall be provided at a rate of 10 square feet for each inmate for which the facility is designed up to 480 inmates. For facilities with a design capacity of over 480, no additional recreation space is required. A minimum of two recreation areas shall be provided in facilities with a design capacity of up to 240 inmates. For facilities with a design capacity greater than 240 inmates, a minimum of three recreation spaces shall be provided.

B. Indoor recreation is required, and consideration shall be given to outdoor recreation. At least one indoor recreation area shall have a minimum of 1000 square feet with an 18 foot ceiling height or overhead clearance. At least one outdoor recreation area, if provided, shall have a minimum of 1500 square feet with an 18 foot overhead clearance. Additional recreation areas, if indoors, may have lower clearance or ceiling heights if being utilized for activities such as a weight room or ping-pong. No recreation area shall have less than 600 square feet or measure less than 20 feet in any one direction.

## **6VAC15-81-770. Library.**

Library space shall be provided for an inmate library or provisions made for alternative library services.

## **6VAC15-81-780. Commissary.**

Space shall be provided for an inmate commissary and associated storage or provisions shall be made for alternative commissary services.

## **6VAC15-81-790. Facility visiting area.**

A. Accommodations for public visitors shall be designed to provide flexibility in the degree of physical security and supervision commensurate with security requirements of variously classified inmates. Paths of ingress or egress for inmates shall be designed to be separate from and not intersect ingress or egress paths of public visitors.

B. Consideration shall be given to providing lockers or areas for storage of handbags or other articles in the public lobby.

## C. Noncontact visitation.

1. Noncontact visiting shall be provided at a rate of not less than one noncontact visiting space for each 20 inmates for whom the facility is designed, up to 240 inmates. Facilities designed for more than 240 inmates shall provide one additional noncontact visiting space for each additional 50 inmates.

2. In noncontact visiting areas, means shall be provided for audible communication between visitors and inmates. The communication system provided shall be designed to prevent passage of contraband.

3. If video visitation is utilized, a combination of on-site and off-site video visitation units for the public may comply with the requirements of subdivisions 1 and 2 of this subsection. In no event shall off-site video visitation be the only form of noncontact visitation.

4. At least 25% of public noncontact visitation shall be on site.

5. If inmate video visitation spaces are provided in the housing units, at least eight square feet shall be provided per video visitation space. This space shall not be counted towards calculation of dayroom or multipurpose room space.

## D. Contact visitation.

1. Not less than two secure contact visiting rooms of at least 60 square feet each shall be provided for the first 100 inmates of design capacity for contact visits from law-enforcement officers, attorneys, clergy, and probation officers or parole officers. For facilities having a design capacity in excess of 100 inmates, one additional secure contact visiting room shall be provided for every additional 200 inmates of design capacity. These rooms shall be located to be either visually supervised or monitored by a control station or room.

2. Provisions shall be made to prevent transmission of intelligible communication to adjacent areas.

### **6VAC15-81-800. Food service.**

A. If a kitchen is provided, it shall be equipped to meet the standards of the Department of Health and the following:

1. The kitchen and kitchen storage shall be sized in accordance with the design capacity of the facility and include consideration for future expansion.

2. The kitchen area, exclusive of dining and serving areas, shall be a minimum of 1500 square feet and for facilities in excess of 100 inmates of design capacity an additional three square feet per inmate shall be provided. The kitchen shall be located with consideration for ease of serving the inmate population and where supplies can readily be received without breaching security. Space for food storage rooms is in addition the above minimum square footage.

3. Consideration shall be given to providing an inmate break area within the kitchen area. This shall not reduce

the size of the kitchen or other spaces associated with the kitchen.

4. A janitor's closet and mop sink shall be located within the kitchen for exclusive use in the kitchen.

5. Storage space of adequate size and type to accommodate perishable, frozen, and bulk dry food storage shall be provided.

a. For facilities with a design capacity up to 1000 inmates, the storage space shall be sized not less than three square feet of floor space per inmate. For design capacity in excess of 1000, the sizing may be 2.7 square feet of floor space per inmate for the next 800 inmates. Further reductions may be approved for jails with a design capacity of greater than 1800 inmates. Storage space requirements are based on a seven-day supply need. Aggregate kitchen storage space shall be a minimum of 300 square feet of floor space.

b. The following breakdown of storage space is recommended: 40% dry, 36% refrigerated and 24% freezer.

c. Walls for food storage shall extend to the structure above.

6. All kitchen counters and table tops, legs, and bases; shelving; and fixed equipment shall be stainless steel.

7. The floors, walls, and ceilings in the food service areas shall be a smooth durable finish, shall withstand food spillage, and shall be easily cleanable.

8. Adequately sized separate lockable storage shall be provided for caustic, toxic, and flammable kitchen supplies. Secure storage or space for secure storage shall be provided for kitchen inventory of sharp implements and other potential weapons. Consideration shall be given for locating lockable storage in a separate locked room.

9. Provisions shall be made for kitchen waste removal from the kitchen area without crossing the food preparation area.

10. Hand washing sinks for inmate toilets shall be located outside the toilet room and in view of the staff.

11. Consideration shall be given to locating an emergency eye wash station in the kitchen.

12. Consideration shall be given to providing a smoke removal system for the kitchen.

B. In addition to kitchen and kitchen storage areas, a staff dining or break area shall be provided with a minimum of 15 square feet for each person the area is designed to serve. Floors, walls and ceilings shall be a smooth, durable finish and easily cleanable.

### **6VAC15-81-810. Laundry.**

A. If a central laundry is provided, commercial or institutional grade equipment shall be provided.

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B. Finishes shall be durable and easily cleanable. Electrical, plumbing, and ventilation shall be as described in Article 5 (6VAC15-81-980 et seq.) of this part.

C. The guidance for washer capacity is to provide 15 to 20 pounds of laundry per inmate per week. The minimum recommended ratio for dryer to washer load poundage shall be a minimum of 1.5 to 1.

D. There shall be sufficient storage for linen and laundry supplies. Separate lockable storage shall be provided for caustic, toxic, and flammable supplies.

E. Secure lockable storage shall be provided for chemical containers serving laundry machines.

F. All gas supply and exhaust venting on dryers shall be protected from exposure to and vandalism by inmates.

G. A janitor's closet and mop sink shall be located within the laundry for exclusive use in the laundry.

H. Consideration shall be given to providing a smoke removal system for the central laundry area.

I. Consideration shall be given to locating an emergency eye wash station in the central laundry area.

J. Consideration may be given to providing small load capacity laundry equipment in property storage, community custody, and minimum security housing areas in addition to the central laundry.

K. Provisions for future expansion shall be considered.

## **6VAC15-81-820. Storage.**

In addition to storage required for particular areas, the following shall be provided to accommodate facility design capacity at a minimum:

1. Storage for inmate clothing, linens, towels, etc.
2. Storage for recreation and related equipment located in or near indoor and outdoor recreation areas.
3. Secure storage for medical supplies and biohazard waste.
4. Storage for extra inmate mattresses and bunks.
5. Secure storage for janitorial supplies in janitorial closets located conveniently to areas serviced.
6. Secure storage for inmate records.
7. Storage space in the administration area for equipment, records, and supplies for established and projected population needs.
8. Staff uniforms and equipment.
9. Secure storage for evidence and contraband.

### Article 3

#### Additional Design Requirements

## **6VAC15-81-830. Elevators.**

A. Facilities with three or more stories shall be provided with at least two elevators.

B. Elevators within the secure perimeter shall be capable of being securely controlled and managed locally and from a control room. Consideration shall be given in all elevators to provide visual and audio communication with the control room.

## **6VAC15-81-840. Corridors.**

Corridors used for the movement of inmates, stretchers, food and utility carts, etc. shall be constructed to provide a minimum width of five feet.

## **6VAC15-81-850. Intercom, closed circuit television, video, and sound services.**

A. As a minimum, each housing unit shall be equipped with an electronic sound monitoring system that allows inmates to notify staff in the case of an emergency. This system shall be monitored by master control or other remote control room or control station.

B. Two-way intercoms shall be provided at all remotely controlled security doors other than cell doors.

C. The facility shall be designed to maximize direct visual sightlines. As a supplement to direct visual observation, CCTV shall be installed to observe, at a minimum, blind spots in corridors, sally ports, building entrances, and the building exterior.

D. If video teleconferencing or arraignment is to be utilized, adequate space shall be provided.

E. Consideration shall be given to the requirements of PREA when installing video monitoring, electronic surveillance, or other monitoring technology.

F. In areas where voice communications through the glazing is desired, such as a magistrate, visitation, and control rooms, a system utilizing vandal resistant individual speakers, microphones, intercom, telephone, speak-around frames, or an approved equivalent shall be specified.

## **6VAC15-81-860. Telephone.**

Inmate telephone service shall be provided in all inmate housing units, including intake and special purpose housing, within the jail.

## **6VAC15-81-870. Glazing in doors.**

Glazed view panels shall be provided in all doors for security and safety, with the following exceptions:

1. Doors to janitorial closets, plumbing chases, storage areas, employee dining, staff break room, pharmacy, toilets, maintenance rooms, property storage rooms, evidence rooms, armory, mechanical rooms, electrical rooms, telecommunication rooms, security electronics rooms, offices outside the secure perimeter, and similar rooms.
2. Doors required by the building code to have a three-hour fire-resistance rating are not required to have view panels.

**6VAC15-81-880. Mechanical, maintenance, security electronics.**

A. The main mechanical room shall be located outside the secure perimeter and shall be accessible from the outside.

B. If a separate maintenance shop is provided, it shall be located outside the secure perimeter and shall be accessible from the outside.

C. The main security electronics shall be contained in a room specifically designed for that purpose or shall be securely separated from other equipment. Security electronic rooms shall not provide access to other spaces or services. An independent cooling system shall be provided for this room.

**6VAC15-81-890. Access for replacement of mechanical equipment.**

Design shall provide access for replacement of larger pieces of mechanical equipment without having to relocate other equipment or cut holes through walls, floors, roofs, or ceilings.

**6VAC15-81-900. Plumbing.**

A. Walk-in type plumbing chases shall be provided with lights and electrical outlets to facilitate maintenance.

B. Sufficient floor water drains shall be provided throughout the jail to enable water to be easily removed from areas subject to water spillage or flooding (i.e., shower, group toilet areas, dayrooms, kitchens, etc.).

C. At a minimum, the capability of shutting off the domestic water supply shall be provided for each individual housing unit with one control per housing unit.

D. Plumbing fixtures in special purpose and intake cells shall have individual shutoff controls for domestic water supply.

E. Domestic water shutoff controls shall be in a remote location in proximity to each housing unit and shall be easily accessed by staff, but not inmate accessible.

**6VAC15-81-910. Housing unit stair and cell tier guard rails.**

Guard rails shall be a minimum height of 48 inches above the floor or stair treads in housing units and inmate stairs, including egress stairs and tiers.

Article 4  
Construction Requirements

**6VAC15-81-920. Building systems - general.**

A. The requirements set forth in this article establish the requirements for building materials, equipment, and systems to be designed and constructed in facilities within the Commonwealth of Virginia.

B. The building components and design criteria denoted in this article are intended to relate the facilities' security and custody level and expected use conditions, with the materials, equipment, and systems expected performance, particularly as related to strength, safety, and durability characteristics.

C. Matching the performance levels of the various components which make up a security enclosure or system is of equal importance. They shall be comparable and compatible.

D. All work shall be done in accordance with acceptable design and construction practices and material shall be installed in accordance with manufacturer recommendations or as otherwise noted.

**6VAC15-81-930. Structural systems - walls, floors, roofs, ceilings.**

A. Wall systems - general. Walls encompassing areas occupied by inmates shall provide a secure barrier for their entire height and length, both horizontally and vertically, to prevent unauthorized ingress or egress. Security walls shall provide continuity at adjacent security walls, horizontal security barriers or the secure perimeter. The joints and voids between secure walls and horizontal security barrier shall be protected with materials of security level equivalent to the remainder of the wall.

1. Security walls.

a. Security perimeter walls shall be of masonry, concrete, steel, or other approved noncombustible building material and shall comply with ASTM F2322 testing method Grade 1 to a minimum of 1,000 blow counts.

b. Interior security walls shall be of masonry, concrete, steel, or other approved noncombustible building material and shall comply with ASTM F2322 Grade 1. Security shall be maintained for the entire height of the wall and integrated with the next horizontal security barrier.

c. Security walls may be of the following materials and construction:

(1) Concrete masonry units with block cores filled solid with 3,000 psi grout in accordance with ASTM C476. All masonry mortar shall be a minimum of 2,500 psi compressive strength and comply with ASTM C270.

(a) Security perimeter walls shall have vertical #4 reinforcing rods in every masonry core spaced eight inches on center maximum. Every masonry core shall be grout filled.

(b) Interior security walls shall have vertical #4 reinforcing rods in every other masonry core spaced 16 inches on center maximum. Every masonry core shall be grout filled.

(2) Concrete walls may be cast in place or precast reinforced high-strength concrete panel. Walls shall be a minimum of 4,000 psi compressive strength (28-day break). Minimum thickness of solid core concrete shall be four inches. Refer to the Prestressed/Precast Concrete Institute to calculate the equivalent thickness of hollow core concrete panels. Hollow core plank shall not be used for security walls.

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(3) Steel wall assemblies shall meet ASTM F2322 testing requirements Grade 1 or better and shall be coated with a zinc-iron-alloy (galvanneal) coating meeting ASTM A653, Commercial Steel (CS), coating designation A60 (Z180) designation or better. Walls shall be securely anchored to structural slabs in floor, adjacent security walls, and horizontal security barrier.

(4) Bar grille security walls shall be 2-1/4 inches by 3/8-inch steel flat bar frame with vertical 7/8-inch round double ribbed bars spaced five inches or less on center with 2-1/4 inches by 3/8-inch horizontal steel bars approximately 16 inches on center. Bar grille shall be securely anchored to adjacent security walls and horizontal security barriers.

(5) Woven rod security walls shall be fabricated from 3/8-inch diameter mild steel rods spaced not more than two inches on center in two directions, interwoven, and crimp-locked. Rods shall be anchored securely into a heavy gage (10-gage minimum) tubular steel frame or structural equivalent flat steel bar or channel. Frame shall be securely anchored to adjacent security walls and horizontal security barriers.

(6) Nonload bearing walls in inmate housing units less than 12 feet high shall have 12-gage steel continuous angles between overhead horizontal structural members on both sides. Voids located at the top of the wall shall be sealed with concrete masonry units grouted solid, solid concrete masonry units, or 3/16-inch metal plate. Walls in excess of 12 feet shall be stabilized but may use clip angles in lieu of continuous angles.

## 2. Wall penetrations.

a. Access doors or panels shall be the same security grade as the wall in which they are installed.

b. Access doors or panels to access building systems and equipment shall be a minimum of two-feet by two-feet.

c. Consideration shall be given to designing mechanical, electrical, fire protection, and security electronics systems to minimize access doors or panels in walls.

d. Ceiling access panels or doors within the secure perimeter shall be provided with panels and locks equivalent to the security level of the ceiling in which it is used.

e. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be adjusted and checked without the installation of access panels.

f. Any opening behind a toilet fixture shall be protected in accordance with the requirements of the wall where it is installed.

## 3. Interior partitions within the secure perimeter.

a. Interior partitions shall be constructed of a minimum of six-inch concrete masonry units or equivalent.

b. Mortar utilized when the wall is of masonry unit construction shall be a minimum of 2000 psi compressive strength.

c. Openings in interior partitions.

(1) Doors and frames shall be a minimum of 1-3/4 inches thick commercial grade hollow metal with a minimum 16-gage door and 14-gage frame.

(2) Door hardware shall be a minimum of commercial grade.

(3) Windows shall have security glazing or tempered glass in accordance with 6VAC15-81-970.

## B. Floor systems.

1. Floor systems within and including the secure perimeter shall be one of the following:

a. A poured-in-place concrete slab on grade with a minimum thickness of four inches and not less than continuous six-inch by six-inch by 10-gage embedded welded wire fabric reinforcing or equivalent.

b. Hollow core concrete plank system providing a minimum equivalent concrete thickness of:

(1) Three inches if cores are oval or round; or

(2) Four inches if cores are square or rectangular.

For purposes of calculating equivalent thickness for security, topping is not included.

c. Precast concrete tees providing a minimum equivalent concrete thickness of four inches at the flange. If topping is used, it shall be a normal weight concrete of a minimum of two inches thick and provide adequate cover for #4 rebar eight-inch on center in one direction or W4 welded wire mesh six-inch on center in both directions.

2. Floors in six-sided steel cells and six-sided precast concrete cells shall be tested in accordance with ASTM F2697 testing requirements Grade 1 to a minimum of 1,000 blows for horizontal assemblies.

## C. Roof and ceiling systems.

1. Upper secure perimeter shall consist of a roof or ceiling as follows:

a. Roofs. The roof construction or uppermost secure perimeter shall be one of the following:

(1) A minimum of four inch standard weight concrete with a minimum strength of 3000 psi. Reinforcing shall consist of not less than continuous six-inch by six-inch by 10-gage embedded welded wire fabric reinforcing.

(2) Precast concrete plank or panels providing a minimum total concrete thickness of four inches.

(3) Hollow core concrete plank providing a minimum equivalent concrete thickness of:

(a) Three inches if cores are oval or round; or

(b) Four inches if cores are square or rectangular.

For purposes of calculating equivalent thickness for security, topping is not included.

(4) Three-inch standard weight concrete with a minimum strength of 3000 psi on 16 gage steel form (or decking) on concrete or steel support members.

(5) Three-inch standard weight concrete with a minimum strength of 3,000 psi with six-inch by six-inch by 10-gage wire fabric on a 22-gage steel form (or decking) on concrete or steel supporting members.

(6) Precast concrete tees providing a minimum equivalent concrete thickness of four inches. If topping is used, it shall be a normal weight concrete of a minimum

of two inches thick and provide adequate cover for #4 rebar eight-inch on center in one direction or W4 welded wire mesh six-inch on center in both directions.

b. Ceilings. A ceiling used for the uppermost horizontal secure perimeter is acceptable if tested in accordance with ASTM F2697 testing requirements to a minimum of 1,000 blows.

2. Interior ceilings. Ceilings within the secure perimeter, but not serving as the secure perimeter, shall have or exceed the level of protection specified in the table in this subdivision.

<u>Ceiling Location (within the secure perimeter):</u>	<u>Minimum ceiling height / min. clear ht.<sup>2</sup></u>	<u>Security steel systems as approved by reviewing authority</u>	<u>Security gypsum board<sup>6,7</sup></u>	<u>CWFAM w/ hold-down clips<sup>3</sup></u>	<u>Gypsum board - single layer</u>	<u>Lay-in ACT with hold-down clips<sup>4</sup></u>	<u>Exposed structure not requiring a ceiling<sup>1,2</sup></u>
<u>Corridor in housing unit</u>	<u>10'</u>	<u>X</u>					<u>15'</u>
<u>Corridors in other than housing unit</u>	<u>8'</u>			<u>X</u>			<u>15'</u>
<u>Personnel sally port</u>	<u>8'</u>		<u>X</u>				<u>10'</u>
<u>Vehicular sally port</u>	<u>15'</u>						<u>15'</u>
<u>Inmate toilet</u>	<u>9'</u>		<u>X</u>				
<u>Staff toilet</u>	<u>8'</u>					<u>X</u>	
<u>Janitorial closet</u>	<u>8'</u>				<u>X</u>		<u>10'</u>
<u>Mechanical /electrical/maintenance rooms</u>	<u>9'</u>						<u>9'</u>
<u>Security electronics room<sup>5</sup></u>	<u>9'</u>						<u>9'</u>
<u>Storage room</u>	<u>8'</u>				<u>X</u>		<u>15'</u>
<u>Office areas</u>	<u>8'</u>					<u>X</u>	
<u>Tool rooms</u>	<u>8'</u>						<u>8'</u>
<u>Control room<sup>5</sup></u>	<u>8'</u>					<u>X</u>	
<u>Intake/booking/processing</u>	<u>9'</u>			<u>X</u>			<u>15'</u>
<u>Cells</u>	<u>7'6"</u>	<u>X</u>					
<u>GP dayrooms-single level:</u>	<u>10'</u>			<u>X</u>			<u>15'</u>



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<u>GP dayrooms-two level:</u> <u>Perimeter ceiling areas</u> <u>above the tier walkway to a</u> <u>point 6'0" from the edge of</u> <u>tier railing</u>	<u>8'</u>		<u>X</u>				
<u>Center part of dayroom</u> <u>ceilings, starting at 6'0"</u> <u>minimum horizontally</u> <u>from edge of tier railing</u>	<u>15'-AFF</u> <u>of</u> <u>dayroom</u>					<u>X</u>	<u>15'</u>
<u>Cells</u>	<u>7'6"</u>	<u>X</u>					
<u>Dormitories</u>	<u>10'</u>			<u>X</u>			<u>15'</u>
<u>Inmate toilet areas<sup>9</sup></u>	<u>9'</u>		<u>X</u>				
<u>Inmate Showers<sup>9</sup></u>	<u>7'6"</u>						
<u>Kitchen<sup>9</sup></u>	<u>9'</u>				<u>X</u>		
<u>Staff dining room</u>	<u>9'</u>					<u>X</u>	
<u>Food storage</u>	<u>10'</u>				<u>X</u>		<u>12'</u>
<u>Laundry</u>	<u>10'</u>		<u>X</u>				<u>12'</u>
<u>Vocational shops</u>	<u>9'</u>				<u>X</u>		<u>12'</u>
<u>Indoor recreation main</u> <u>recreation</u>	<u>18'</u>						<u>18'</u>
<u>Classrooms, library,</u> <u>multipurpose and other</u> <u>similar spaces</u>	<u>10'</u>			<u>X</u>			
<u>Visiting:</u>							
<u>Contact visiting room</u>	<u>9'</u>		<u>X</u>				
<u>Inmate search</u>	<u>9'</u>		<u>X</u>				
<u>Noncontact visiting</u>	<u>9'</u>		<u>X</u>				
<u>Medical:</u>							
<u>Waiting rooms</u>	<u>9'</u>		<u>X</u>				
<u>Exam rooms &amp;</u> <u>treatment areas</u>	<u>9'</u>		<u>X</u>				
<u>Medical offices,</u> <u>records</u>	<u>9'</u>					<u>X</u>	
<u>Pharmacy<sup>5</sup></u>	<u>9'</u>						
<u>Warehouse</u>							<u>12'</u>
<u>Canteen</u>	<u>9'</u>				<u>X</u>		<u>12'</u>
<u>Property storage</u>							<u>12'</u>

<u>Ceiling Location (outside the secure perimeter):</u>							
<u>Armory<sup>5</sup></u>	<u>9'</u>						
<u>Community Custody</u>							
<u>Corridor - community custody<sup>8</sup></u>	<u>8'</u>					<u>X</u>	<u>12'</u>
<u>Community custody housing</u>	<u>10'</u>				<u>X</u>		<u>15'</u>
<u>Community custody entry/processing<sup>8</sup></u>	<u>9'</u>					<u>X</u>	<u>12'</u>
<u>Multipurpose spaces</u>	<u>10'</u>					<u>X</u>	<u>12'</u>

<sup>1</sup>Minimum clear height that does not require a ceiling. Clear height means distance from the floor to the ceiling or roof or lowest hanging or suspended utilities or fixture.

<sup>2</sup>Minimum clear height to lowest structure, ceiling panel, utility or fixture.

<sup>3</sup>Hold-down clips on cementitious wood fiber acoustical material (CWFAM) shall be equivalent to hurricane strength clips secured with screws.

<sup>4</sup>Hold-down clips on lay-in ceiling must not release under upward pressure without breaking or hold dislodging of panels without damage to the panels.

<sup>5</sup>Walls shall go up to floor or ceiling above or the area has a security cap.

<sup>6</sup>Security gypsum ceiling shall be constructed in accordance with the following: two layers of 5/8-inch gypsum wall board with 0.66 pounds per square foot, on 1/2-inch by 13-gage or 3/4-inch by nine-gage diamond mesh metal lath, per ASTM F1267, Type I or Type II securely fastened to the structure or structural supports.

<sup>7</sup>Cement plaster ceilings of not less than three-coat Portland cement plaster installed on approved heavy metal lath may be used in these locations.

<sup>8</sup>No hold-down clips are required.

<sup>9</sup>Moisture resistant material appropriate to wet locations shall be used.

3. Secure ceilings shall be provided in other areas where inmates are unsupervised.

4. Consideration shall be given to ensure that adequate space (a minimum of eight inches) is provided between the ceiling (including recessed lighting fixtures) and above ceiling building systems (e.g., duct, conduit, wiring, piping, tubing, structure, etc.) to allow for installation of the ceiling at the specified height.

5. Ceilings over showers and toilets shall be equivalent to security requirements of space in which it is located.

6. Security capping.

a. Any space surrounded by interior security walls that does not extend to a secure floor or roof structure above or uppermost horizontal secure perimeter shall be capped to comply with a material or assembly meeting the requirements of ASTM F2322 testing method to Grade 1 or with four inches of concrete or equivalent. This includes cells, control rooms, sally ports, and armories.

b. Open spaces above areas required to be security capped shall be protected to eliminate blind spots or access for hiding.

7. All penetrations of the uppermost secure perimeter shall be protected by maximum security opening protectives equivalent to types specified in 6VAC15-81-940,

6VAC15-81-950, and 6VAC15-81-960. Where operable, opening protective shall be equipped with maximum security locks in accordance with 6VAC15-81-950.

8. Access openings.

a. Consideration shall be given to designing mechanical, electrical, fire protection, and security electronics systems to minimize access doors or panels in ceilings.

b. Protection of openings shall be the same security grade as the ceiling in which it is installed.

c. All access openings to the space above security ceilings shall be protected by hinged metal access panels or doors equipped with keyed locks.

d. Access doors or panels to access building systems and equipment shall be a minimum of two-feet by two-feet.

e. Ceiling access panels or doors within the secure perimeter shall be independently and securely supported to prevent vertical displacement.

f. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be adjusted and checked without the installation of access panels.

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## **6VAC15-81-940. Doors and frames - security and nonsecurity.**

A. Security doors used where perimeter security and interior security walls are required shall be one of the following:

1. Hollow metal security doors shall meet the requirements of ASTM F1450 as follows:

a. Maximum security and perimeter security doors shall be ASTM Grade 1.

b. Doors in interior security walls and associated with medium security housing shall be ASTM Grade 2 or better.

c. Minimum security doors shall be ASTM Grade 3 or better, except doors shall be Grade 2 or better if in interior security walls.

2. Bar grille doors shall include double ribbed steel bars measuring 7/8-inch diameter at five inches on center with flat steel crossbars measuring 3/8-inch by 2-1/4 inches at 18 inches on center with punched holes for ribbed bars at five inches on center. Door frames shall be installed in accordance with Hollow Metal Manufacturers Association (HMMA) 863 and ASTM F1450.

3. Woven rod door.

a. Woven rod door frames shall be constructed of tubular shaped 12-gage steel channel or 3/16-inch right-angle bent steel plate, punched to receive woven rods.

b. The cap channel shall be 12-gage steel plate.

c. The woven rod door mesh shall be 3/8-inch in diameter steel rod woven at two inches on center each way and double crimped.

d. Welds shall be placed a minimum on every other rod where it cannot be accessed by the inmate.

e. The frame shall be mounted into a 10-gage formed steel channel, expansion anchored to the wall, and field welded to the mount channel.

f. Door frames shall be installed in accordance with HMMA 863 and ASTM F1450.

4. Access opening protection.

a. Access panels, doors, frames, locks, and hardware shall at a minimum be equivalent to the security level of the wall, roof, or floor where they are installed.

b. Steel plate doors may be used as an alternate. If used, access doors or panels shall meet the following requirements:

(1) Shall be a minimum of 3/16-inch thick plate steel.

(2) Shall have minimum of 3/16-inch bent steel plate or equivalent rolled steel shape door frame. Each jamb for security access openings shall be anchored with wall anchors not to exceed 18 inches on center with a minimum of two wall anchors per jamb.

(3) Frame and bracing shall be sufficient to prevent the door or panels from flexing or warping from abuse.

B. Nonsecurity doors shall be steel commercial grade minimum 1-3/4 inches thick hollow metal doors with 16-gage face sheets with rigid inner core. Frames shall be commercial grade 14-gage hollow metal or equal.

C. Solid core wood doors are an acceptable alternative as a nonsecurity door in walls designated as nonsecure.

D. Additional features.

1. Where doors and hardware are required by the building code to be fire-rated construction, such construction shall not reduce or compromise the security requirements or present a hindrance to emergency evacuation.

2. Security frames shall be completely filled with 3,000 psi fine grout meeting the requirements of ASTM C476.

3. Doors for any room utilized by inmates shall open out away from the inmate occupied side.

4. Doors in inmate occupied areas shall not have loop pulls on the inside of the door. Finger pulls are recommended in those locations.

5. Passproof thresholds shall be installed at doors to prevent passing of contraband between housing units.

6. Sliding doors, door mechanisms, and food passes shall be oriented and installed to minimize inmate interference with door operation.

## **6VAC15-81-950. Locks and locking systems.**

A. Security level. Locks shall meet the requirements of ASTM F1577 for swinging doors and ASTM F1643 for sliding doors. Locks on perimeter security doors and maximum security doors shall be Security Grade 1. Locks in interior security walls shall be Security Grade 2 or better. Locks in interior security partitions shall be Security Grade 3 or better.

B. Locking devices. Where a high degree of security and positive door control is required in cells, dayrooms, and corridors, sliding door locking devices capable of being operated from a control room are recommended.

C. Magnetic and electromagnetic locks shall not be used as security locks.

D. Controls shall be provided to operate the locks and locking devices in the required modes.

1. The switches, relays, and other devices shall make up a control system compatible with the locks and locking devices and shall be capable of providing the switching necessary to satisfy all desired operational modes.

2. A master control console or panel shall be designed to display all switches to the operator. Normally installed in a secure room (i.e., officer control room) the console shall be equipped with a control for each door, a group control for each wing of the building (or cell block), and controls for the corridor and sally port doors that control access to those wings.

3. In housing control stations and control rooms, door controls shall release cell doors individually, as a group, and as emergency release.

4. Housing control stations and control rooms shall have a local and remote power cutoff and the ability to transfer operation to the master control room.

5. Control panels shall have position, lock, and roller bolt or locking bar indication for security gates and doors.

6. In the event of a power failure the locking system shall be fail secure.

7. Emergency release provisions shall be made for unlocking or group-release of cell doors in case of fire, power failure, or other emergencies.

a. Standby power from a generator is required.

b. Other forms of emergency release shall be reviewed and approved by the reviewing authority.

E. Master keying shall be provided for all security locks. Master keying shall utilize a minimum of two keys so that no one key can be used to get from any point in the facility through multiple doors to the outside of the facility. All secure perimeter doors shall be keyed separately from interior doors.

F. Locks on inmate toilet room doors, with the exception of within housing units, shall be lockable from the outside but not lockable from the inside.

G. Within housing units, locking shall be as follows:

1. Inmate showers and toilet rooms with full height doors shall be staff lockable from the outside but shall not be capable of being locked or latched from the inside.

2. Inmate showers and toilet rooms with partial height doors may be latched from the inside.

H. Staff toilets shall be key locked from the outside and thumb turn operable or not lockable from the inside.

I. Plumbing chases shall not be lockable from the inside.

J. Sally ports interlocking requirements.

1. Sally port doors shall be interlocked in a manner that only one sally port door or gate shall be openable at a time under normal operation. All sally port doors or gates shall be installed so they are confirmed to be locked by mechanical or electronic means prior to the opening of any other door or gate. Sally port locking and unlocking shall be remotely controlled from a secure control room.

2. Vehicular sally port gates or doors shall be capable of being operated and locked from a remote location with provisions for manual operation and locking when power is off or in the event of emergency action.

3. Vehicular sally port doors shall be a minimum of 12 feet high.

4. Rollup and bifold doors in vehicular sally ports, warehouse, and loading docks are not considered security doors.

5. Cell door release shall be separate from housing unit entry door release locking.

6. Doors between adjacent housing units shall not be interlocked with sally ports.

## **6VAC15-81-960. Window frames.**

A. Performance requirements and criteria for the selection and intended use of windows shall include the following considerations: security, natural lighting, ventilation, and weather protection.

B. Security requirements.

1. Security frames shall have 1-1/4-inch glazing stops with a one-inch bite and be secured with security screws on the non-inmate side.

2. Security frames shall be completely filled with 3,000 psi fine grout meeting the requirements of ASTM C476.

3. Windows shall have security glazing in accordance with 6VAC15-81-970.

4. Where necessary because of field conditions in renovations or replacements, field fabricated security windows shall have a minimum 14-gage window frame and be approved by the reviewing authority.

C. Secure perimeter. Windows frames that are to be installed in the building perimeter security (exterior and interior walls and clearstory/skylight assemblies) shall meet the requirements of ASTM F1592 Grade 1 or better

D. Interior security.

1. Maximum security window frames shall be Security Grade 1 or better.

2. Window frames in other interior security walls shall be Security Grade 2 or better.

E. Non-security windows may be provided in an exterior security wall to provide a noninstitutional appearance. When such windows are used, however, the window opening shall be protected on the interior side of the opening by a steel bar grille or woven rod with security frame comparable to the security assemblies described in this section.

## **6VAC15-81-970. Security glazing.**

A. When selecting glazing, consideration shall be given to ballistic attack, whether penetration of glazing would compromise security or allow passage of contraband, degree of staff supervision or surveillance, and anticipated amount of vandalism.

1. Glazing security grade level shall be in accordance with ASTM F1915.

2. Bullet resistant glazing shall meet ballistics requirements of ASTM F1233 for weapons capable of concealment and UL 752 Level III, super power small arms. This glazing shall be low spalling or no spalling.

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B. The level of glazing resistance to penetration or ballistic attack shall be consistent with the security level of walls and other building components in which it is located.

1. Where openings exceed five inches in one direction and are not protected by bar grille or woven rod:

a. Glazing in maximum security walls and doors shall be Security Grade 1 or better.

b. Glazing in interior security walls and doors shall be Security Grade 2 or better.

c. Glazing in interior partitions inside the secure perimeter shall be Security Grade 4 or better.

2. Glazing in control rooms shall be:

a. Security Grade 1 in master control room.

b. Security Grade 1 and bullet resistant where glazing separates a control room from a public area.

c. Security Grade 2 or better for other control rooms.

3. Glazing associated with visitation or magistrate areas that form a part of the secure perimeter shall be one of the following:

a. Security Grade 1 glazing with bar grille or woven rod.

b. Security Grade 1 glazing and bullet resistant.

c. Glazing in visitation between the public and inmate may be Security Grade 1 glazing supplemented by an additional secure perimeter wall with sally port enclosing the public side of the visitation area.

4. Security glazing panels shall be no larger than 36 inches by 48 inches unless located a minimum of seven feet above floor level.

5. Glazing security grade may be reduced one level if lowest portion of glazing is 12 feet above adjacent floor level.

6. Tempered or insulated glass or both may be used in openings five inches or less in one direction unless bullet resistant or contraband resistance is required, in which case glazing rated for such shall be used.

7. Glass security glazing or glass clad security glazing shall not be used unless required for fire rating or unless approved by the reviewing authority on a case by case basis for specific locations.

8. Plate glass, float glass, and other conventional glass other than wire or tempered glass shall not be used in any openings located within the secure perimeter or in any interior security walls, interior partitions, doors, or other openings within the area enclosed by the secure perimeter. Wire glass may only be used where required for fire rating purposes.

9. Tempered glass, if used, shall meet the requirements of (American National Standards Institute) ANSI Z97.1 Class A safety test or Consumer Products Safety Commission Category II safety test.

10. Where bar grille or woven rod is required to be used for windows, it shall be similar in design and constructed in accordance with bar grille or woven rod indicated in 6VAC15-81-930.

11. Where the frame or frame and mullions provide the security for the window opening, the maximum clear dimension of the opening shall be no more than five inches in one direction.

12. All openings, such as windows, louvers, clearstories, and skylights, penetrating the secure perimeter walls, floors, or roof shall be protected by bar grille or woven rod partitions constructed as required by subdivisions A 1 c (4) and A 1 c (5) of 6VAC15-81-930 when they are larger than:

a. Eight inches by eight inches or;

b. Five inches in one direction if the other dimension is larger than eight inches.

Exception: Glazed areas protected and located in accordance with subdivision 3 of this subsection.

13. To avoid tampering, removable glazing stops shall be applied, wherever possible, on the side opposite the inmate occupied area. Where stops are placed in an inmate area, they shall be secured with an ample number of strong, properly installed, tamper resistant fasteners of design required by 6VAC15-81-930 or approved by the reviewing authority. Junctions of horizontal and vertical glazing stops on the inmate side shall be welded to prevent removal of portions of stop members.

14. Exterior windows in security areas in new construction shall be fixed. Exception: In renovations where windows are operable, exterior windows in security areas that are capable of being opened shall have additional protection of heavy duty stainless steel, security wire contraband, and insect screen.

## Article 5

### Mechanical, Plumbing, Electrical, Smoke Control, and Fire Protection

#### **6VAC15-81-980. Mechanical, plumbing, electrical, smoke control, and fire protection installation.**

Unless indicated otherwise by this chapter, all components of mechanical, plumbing, electrical, smoke control, and fire protection systems, including air handlers, fans, duct work, terminal boxes, dampers, heating and cooling equipment, water heaters, pumps, piping, valves, sensors, control wiring, thermostats, tubing, conduit, wiring, motors, lighting fixtures, and associated equipment within the secure perimeter shall be mounted as follows:

1. As high as possible for the intended function and securely fastened to the structure or walls.

2. If located less than 12 feet above the finished floor or within six feet horizontally of guard rails enclosing tier floor and landing levels in dayrooms, the components shall

be specifically designed for the security level of the space where it is installed, protected by a secure enclosure, or protected by secure encapsulation. Exceptions include spaces dedicated for staff use. "Secure enclosure" means secure walls, secure floors, and secure roof or secure ceiling surrounding a space or area.

3. Piping, wiring, conduit, control wiring, and tubing shall not be exposed in cells.

#### **6VAC15-81-990. Mechanical.**

A. Within the secure perimeter of the facility, flexible duct work shall not be installed within six feet of any opening (e.g., register, grille, diffuser, etc.) that can be accessed by inmates.

B. Air inlets and outlets.

1. Maximum security grills shall be provided in the following areas:

a. All cells.

b. Maximum security housing units.

2. Maximum security grills shall have a 3/16-inch steel face plate interconnected to a 3/16-inch thick steel sleeve. Openings in the face shall be no larger than 3/16-inch each. Alternatively, a security grille specifically designed for suicide resistance may be allowed as approved by the reviewing authority.

3. In inmate accessible areas, other than maximum security, security grilles, security diffusers and security face plates shall be 12-gage or protected by 12-gage steel full face protection.

4. Commercial grade grilles, diffusers and face plates may be provided in:

a. Areas where lay-in ceiling tiles or single layer gypsum board ceilings are allowed.

b. Areas located greater than 12 feet above the floor.

c. Areas greater than six feet measured horizontally from any tier.

d. Staff areas within the security perimeter.

5. Grilles, diffusers, and face plates shall be constructed of stainless steel in inmate shower areas and stainless steel or aluminum in kitchen areas. Thickness of stainless steel grilles and diffusers for shower areas shall be as required for the security level indicated in this section.

6. Consideration shall be given to upsizing grille and diffuser sizes, but not openings in face, to compensate for pressure drop due to anticipated paint buildup.

7. Consideration shall be given to locating inlets and outlets to provide proper distribution of air and prevent short circuiting.

C. Opening protectives. Duct and other penetrations of security walls, security floors, security ceilings or security roof shall be protected by bar grille or woven rod meeting the

dimensional requirements for walls in this chapter when they are larger than:

1. Eight inches by eight inches.

2. Five inches in one direction if the other dimension is larger than eight inches.

3. Exceptions:

a. Duct bars are not required in wall penetrations in the interior security walls located within an individual housing unit, or the inner wall of their integral sally port. Duct bars are required in penetrations of control rooms.

b. Duct bars are not required if maximum security grilles are provided in interior security walls or interior security ceilings in accordance with subsection B of this section.

D. Within the secure perimeter, portions of the mechanical system requiring maintenance or inspection shall be located so it cannot be accessed by inmates.

E. Supply, return, or exhaust through chases shall be ducted.

F. Armories shall have a dedicated exhaust to the outside of the building.

G. Control rooms shall have dedicated HVAC systems.

#### **6VAC15-81-1000. Plumbing.**

A. Showers.

1. Showers shall include a soap dish and drain. Shower heads shall be positioned to confine water flow to shower stall.

2. Hot and cold or tempered running water shall be available in all showers. Hot and cold running water shall be available in all lavatories. Hot water, which is accessible by inmates, shall be controlled by a temperature limiting device to preclude temperatures in excess of 105 degrees F.

3. Toilet area wall, floor, and ceiling surface finishes shall be durable, washable, and resistant to water, mold, and mildew.

4. Shower ceiling, wall, and floor surface finishes shall be durable, washable, and resistant to water, mold, and mildew. Shower and shower area floor surface finishes shall be slip resistant. The reviewing authority may require that inmate showers be constructed from stainless steel.

5. All showers for inmate use shall be operated by metering push button control.

B. Plumbing fixtures.

1. Plumbing fixtures in maximum security housing units shall be stainless steel

2. In indirect supervision medium security housing units, toilets and lavatories shall be stainless steel.

3. In minimum security housing units and direct supervision medium security housing areas, toilets shall be a minimum of commercial grade tankless toilets and commercial grade lavatories.

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4. Soap holders in showers and toilet paper holders shall be the recessed type.

5. Showers providing ADA accessibility designed with fixed low shower head shall have a second head at standard height.

6. Where an ADA accessible mirror is provided, a regular height mirror shall also be provided. Height to bottom of regular height mirror is recommended at 53 to 57 inches.

7. Consideration shall be given to maintenance and sanitation (ponding water and soap) and suicide resistance when selecting grab bars in ADA accessible showers.

8. All toilets for inmate use shall be operated by push button activators. Lavatories for inmate use shall be operated by metering push button activators.

9. Inmate plumbing fixtures in sally ports shall be maximum security.

10. Gooseneck faucets shall not be allowed on lavatories in inmate accessible areas.

C. All floors and tiers in housing units shall be provided with adequate drainage to handle standing water associated with shower areas, toilet or sprinkler overflows, and cleaning.

D. Kitchens and laundries shall be provided with adequate drainage.

E. Janitorial closets with mop sinks and storage shall be provided in every inmate housing unit. Janitorial closets shall be provided in proximity to intake and to serve corridors.

F. Toilet facilities for the use of security and administrative staff and inmates shall be located throughout the building. Staff toilet facilities shall be provided in master control stations. Staff toilet facilities shall be provided in, or convenient to, other control stations or control rooms.

G. PVC or other plastic piping, one-half inch or greater, shall not be used above the ground floor slab within the secure perimeter of the jail. For transitions, PVC piping may extend not more than six inches above floor.

H. Plumbing fixtures and lines shall not be located above security electronic rooms.

I. Isolation valves and balancing valves are recommended to facilitate maintenance. Butterfly valves are not recommended.

J. As a minimum, a water supply shutoff controllable from outside each housing unit shall be provided from a location readily accessible by staff but not by inmates. Remotely controlled water supply shutoff valves should be considered for individual inmate cells, especially at special housing.

K. Gravity sanitary drainage mains and fittings serving two or more fixtures in housing units shall have a minimum inside dimension of six inches.

L. For inmate toilets with a gravity sewer, a cleanout with interceptor pin at each tee in chases is recommended.

M. All sanitary and stormwater piping penetrating a secure perimeter wall, security floor, secure recreation yard, or vehicular sally ports shall not exceed eight inches in diameter. If flow calculations require a pipe diameter greater than eight inches, a series of eight-inch or smaller pipes equivalent to or greater than the flow area calculated shall be used. It is expected that multiple pipes be installed as a duct bank.

N. All showers shall be provided with mechanical exhaust directly from the shower compartment. Single showers shall be exhausted individually. In the case of multiple showers without full height partitions between the showers, the exhaust may be from a central one location from the shower area.

O. All fixtures shall be low flow, water saving type.

P. Inmate lavatories, drinking fountains, toilets, and urinals inside the secure perimeter shall not have exposed piping and components.

## **6VAC15-81-1010. Electrical.**

A. All wiring, conductors, and control tubing shall be concealed to the greatest extent possible.

1. Where wiring is exposed and accessible by inmates, it shall be housed in intermediate metal conduit (IMC) or rigid metal conduit (RMC) with threaded fittings.

2. Rigid nonmetallic conduit (PVC or CPVC) shall not be used above ground floor slab within the secure perimeter except when encapsulated in concrete or grouted concrete masonry units. For transitions, rigid nonmetallic conduit may extend not more than six inches above floor.

3. Flexible metallic conduit not exceeding six feet in length shall be allowed above ceilings.

4. Flexible conduit, if required for a moving part of a device (e.g., pan-tilt-zoom camera), shall not exceed 12 inches exposed and shall be liquid tight or equivalent.

5. Electrical metallic tubing (EMT) and other types of conduits are not permitted within the secure perimeter.

B. The intensity of artificial lighting shall be in accordance with the requirements of 6VAC15-40, Minimum Standards for Jails and Lockups.

C. Standby power.

1. A standby power source shall be provided sufficient to sustain, as a minimum, life safety operations, security systems, refrigerators, and freezers.

a. "Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in an emergency situation.

b. Fuel capacity shall be provided for a minimum of 72 hours of operation without refueling.

c. Consideration shall be given to emergency power for nonemergency lighting.

2. Consideration shall be given to protection of generators, standby power source, and fuel sources from unauthorized access or damage by location, fencing, or enclosure.

#### D. Light fixtures.

1. The security level of fixtures shall be consistent with the security level of the area where located.

2. Security light fixtures shall be surface mounted to any ceiling that is the secure perimeter. Exception: Security fixtures that are designed for, integral to, and maintain the security level of the ceiling, which is not the secure perimeter, may be recessed.

3. Fixtures installed in nonsecure lay-in ceilings may be standard fixtures with vandal resistant lenses.

4. Suspended ceiling mounted lighting fixtures in maximum and medium security housing units shall be supported from the structure above with threaded rods, independent of any ceiling grid or framework.

E. Placement of receptacles and lighting switches in individual cells is discouraged. Consideration should be given for access to power for medical devices.

F. Surge protection shall be provided on power supplies for electrically powered systems and service to include those that leave the building.

G. Lightning protection with a UL Master Certification is required for the facility.

#### **6VAC15-81-1020. Smoke control.**

A. A smoke control system shall be provided for dormitory and celled areas such as intake, medical, special purpose, and general population housing.

B. The pressurization method, with a minimum of 24 air changes per hour of exhaust and 20 air changes per hour of makeup air, is preferred, but the exhaust method may be used.

C. Exit corridors shall be positively pressurized to minimize smoke migration into the area and keep the path of egress clear of smoke.

D. A smoke test shall be performed prior to acceptance of the building. The local fire department, local building official, facility safety officer, or their designees shall be invited to witness the smoke tests, and the tests shall be witnessed by the reviewing authority. The areas to be tested shall be at least one each of a typical dormitory and one of each typical celled areas, such as intake, medical, segregation and each configuration of general housing, as determined by the reviewing authority.

E. Smoke machines to perform the tests shall be furnished by the owner or the owner's contractor. Smoke machines provided shall be of sufficient size and capacity to perform the tests in a short period of time.

F. Understanding that there are many variables involved, the desired results of the tests are as follows: from start of smoke machine to system alarm shall be two minutes or less; from system alarm to system activation shall be 30 seconds or less;

from system activation to distinguish an egress path from the center of the room to an exit shall be two minutes or less; and from system activation to the space being sufficiently clear to reset the system shall be 30 minutes or less.

#### **6VAC15-81-1030. Fire protection.**

A. Sprinkler heads in inmate accessible areas shall be detention type heads.

B. Exposed fire alarms, smoke detectors, heat detectors, and audible and visual signaling devices shall be mounted as high as practicable, and if below 12 feet, they shall be covered with heavy-gage tamper-resistant protective cages securely fastened to the surface. All exposed devices including sprinkler heads in gymnasiums or indoor recreation areas shall be covered with protective cages.

#### Article 6

#### Miscellaneous Construction Features

#### **6VAC15-81-1040. Jail equipment.**

A. All jail security equipment, fixtures, hardware, etc. shall be of a design to meet the security level consistent with the intended use of the space.

B. Bunks installed in maximum and medium security cells shall be bolted through the wall, welded to imbeds, or bolted or welded to inserts cast into the wall or floor.

C. Fixed tables and seats shall be through-bolted through the wall, welded to imbeds, or bolted or welded to inserts cast into the wall or floor.

D. Door closers within the secure perimeter shall be the concealed arm type.

E. All equipment and systems shall be installed in accordance with manufacturer instructions unless otherwise required by this chapter or approved by the reviewing authority to be installed differently.

F. Exposed surfaces of all metal tables, bunks, seats, cabinets, grab rails, stringers, hand and guard rails, food passes, windows, doors, frames, shelves, and similar items shall have smooth edges to reduce risk of cutting or other injury.

#### **6VAC15-81-1050. Interstitial spaces.**

Interstitial spaces above cells, freezers, refrigerators, dryers, showers, stand-alone offices, and similar shall be enclosed to facilitate detection of tampering and prevent unauthorized access and to eliminate blind spots.

#### **6VAC15-81-1060. Security fasteners.**

A. Fasteners within the secure perimeter shall be pinned Torx or flush break-off head style fasteners installed with thread locking fluid. Spanner type screws are prohibited.

B. Security fasteners are required in locations as follows:

1. Direct supervision control panels.

2. Inmate accessible elevator cabs and control panels.

3. Security lock mounting plates.



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4. Glazing stops for security windows.
5. Security light fixtures.
6. Hinges for security doors.
7. Field fabricated equipment.
8. Installed furnishings and equipment including annunciator panels, fire extinguisher cabinets, thresholds, kickplates, grab bars, mirrors, floor drains, air diffusers, light switch plates, outlet covers, intercoms, thermostats, and cameras in inmate accessible areas.

C. Fixed tables and bunks shall be secured with fasteners as specified in this section or with peened or tack-welded anchor bolts and nuts to prevent removal.

D. Security fasteners are not required for the following:

1. Mechanical, electrical, generator, elevator equipment, or communication equipment in locked rooms with security doors not accessible to inmates or inside enclosed control rooms.
2. Above security ceilings, behind secure locked access doors or panels, and within secure pipe and duct chases.
3. Movable furnishings, storage shelving, or cabinet hardware.
4. Laundry and kitchen equipment.
5. Equipment mounted higher than 15 feet above finished floor or within six feet of the tier.
6. Outside the secure perimeter.

## **6VAC15-81-1070. Food, paper, and medicine passes.**

A. A pass for food and medicine shall be installed in all maximum security cell doors. For purposes of this requirement, holding, intake, maximum security housing, classification, and special purpose cells are considered maximum security.

B. A pass for food shall be installed in a wall or inner sally port door of each housing unit. The food pass shall be lockable and operable from the sally port interior and shall not interfere with the operation of the door.

C. Locking passes shall be installed with the lock and fold down shelf on the side of the door or wall away from the inmates.

D. The size of a food or medicine pass shall be no more than five inches high and at least 15 inches wide or designed to facilitate passage of trays to be used. Food passes shall be installed at a maximum height of 36 inches to the top of the opening.

E. A minimum of a paper pass shall be installed from each control room to the adjoining corridor.

## **6VAC15-81-1080. Communication.**

A. A secure means of communication and a paper pass shall be provided between control room and each dayroom and between magistrate's office and intake.

B. A secure means of communication and a paper pass shall be provided between law-enforcement lobby and intake.

C. In areas where voice communications through the glazing is required or desired, such as magistrate, visitation, and control rooms, a system utilizing vandal resistant individual speakers, microphones, intercom, telephone, speak around frames or approved equivalent shall be specified.

## **6VAC15-81-1090. Interior finishes.**

A. In secure areas, all interior exposed walls, partitions, and ceilings shall have a low maintenance, nonabsorbent durable finish.

B. All floor surfaces shall be of a durable, low maintenance, nonabsorbent material.

C. If concrete floor surfaces are used, they shall be finished with a sealer or coating.

D. Base molding is not recommended in inmate accessible areas within the secure perimeter.

## **6VAC15-81-1100. Acoustics.**

A. Acoustical treatment shall be provided at a minimum in housing units, activity areas, and intake.

B. Acoustical treatment shall be damage resistant.

## **6VAC15-81-1110. Security sealants.**

A. General.

1. Security sealants shall be either elastomeric (tamper resistant: hardness 50 or greater) or low-mod gel (pick-resistant: hardness 70 or greater) type.

a. Tamper resistant sealants shall be provided within all inmate occupied areas subject to continuous supervision.

b. Pick resistant sealants shall be provided within all inmate occupied areas not subject to continuous supervision, such as cells.

2. Where open joints exceed security sealant capabilities to provide a full seal, a metal cover shall be provided with security sealant at its full perimeter.

3. Tamper resistant sealant with range of movements suitable for the application shall be used. Pick resistant sealant shall not be used in movable building joints.

4. Joints above ceilings, those covered by expansion joint covers or otherwise concealed are excluded from requirements for security sealants.

5. Security sealants shall be installed with a primer and in accordance with manufacturer written recommendations.

B. Inmate occupied areas.

1. Tamper resistant sealant shall be provided as transition between surface applied floor finish and transition to wall face in lieu of an applied wall base.

2. Within all cells, pick resistant sealants shall be provided for gaps and open joints at the perimeter of all permanent materials, furnishings, fixtures, and devices.

3. Tamper resistant sealant shall be provided for gaps and open joints in other than inmate cells at the perimeter of all fixtures and devices that are removable if not designed to be continuously supervised.

4. Locations for application of tamper resistant sealant include the following:

- a. Dayrooms.
- b. Visitation (inmate side).
- c. Classrooms.
- d. Indoor recreation and multipurpose rooms.
- e. Inmate toilets, lavatories, and shower areas.

5. Security sealant is not required higher than 12 feet above the finished floor or beyond six feet horizontally of guard rails enclosing tier floor and landing levels in dayrooms.

**6VAC15-81-1120. Fencing.**

A. Two levels of security fencing are as follows:

1. Inmate containment fencing designed for outdoor recreation areas outside the secure perimeter shall consist of:

- a. Two fences at least 12 feet in height and at least 10 feet apart.
- b. Fence fabric shall be at least nine-gage, 2-1/2-inch mesh maximum opening, galvanized steel interwoven wire.
- c. Razor wire shall be provided and installed per manufacturer recommendations on the top of both fences in the vee arms or on the outrigger arm on the inmate side at the top.
- d. A third row of razor wire shall be located between the fences on the inmate side, adjacent to the outside fence.
- e. All razor wire shall be a minimum of 24/30 inch double helix coil constructed of 100 percent stainless steel.

2. Fencing designed for short-term supervised emergency containment shall be:

- a. At least 12 feet high.
- b. At least nine-gage and 2-1/2-inch maximum opening mesh.
- c. Galvanized steel wire interwoven fence fabric.
- d. Topped with a minimum of three rows of barbed wire securely fastened to support arms at the top of line and corner posts angled to the inmate side.

B. Fence components including the top and bottom rails, line posts, terminal posts, tension bars, attachments, concrete footings for the fence, walk gates and truck gates, shall be in accordance with manufacturer recommendations.

C. Both top and bottom selvage of the fence fabric shall be twisted and barbed.

D. All exterior fencing shall be effectively grounded.

E. After installation, all threaded fittings, connectors, and bolts shall be tack welded or peened to prevent nuts and pins from being removed. All exposed threads and connector twisted wire tie ends shall face away from the inmate side of the fence, except for double fences where the exposed threads and connector twisted wire tie ends shall face between the fences.

F. All twisted wire tie down wires shall be minimum nine-gage galvanized steel and twisted a minimum of two turns at each end.

G. Hog ring type connectors are not allowed in fencing construction.

H. Fences are not required to have barbed wire if protected by razor wire.

I. Openings between the fence post and building shall not exceed two inches.

J. Bracing shall be shielded or installed on the side of fenced away from inmates, except for double fences where the connectors and bolts shall be between fences.

K. Lock assemblies for gates in fence shall be protected from unauthorized access and tampering.

L. Tension wires are not permitted in lieu of bottom rails.

Part VI

Community Custody Facilities Design and Construction

Article 1

General

**6VAC15-81-1130. Community custody facilities design and construction - general.**

A. For localities or regional facilities that demonstrate a need based on the needs assessment, a community custody facility meeting the requirements in this section may be constructed with a number of beds in accordance with 6VAC15-81-220 A.

B. These structures are designed to house community custody inmates as defined in this chapter.

C. When designing the facility, specific consideration shall be given to appropriate traffic patterns; groups of functions; facilitating ease of movement to, from, and within functions; clear sightlines to eliminate blindspots; efficiency and economy of staffing; PREA; and facilitating a smooth, logical sequence of operation.

D. Material and installation shall be in accordance with manufacturer recommendations or as otherwise noted in this chapter.

Article 2

Housing Design

**6VAC15-81-1140. Separate building.**

Community custody housing shall be constructed as a building separate from the secure portion of the jail or separated from the secure portion of the facility by the secure perimeter.

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## **6VAC15-81-1150. Traffic pattern separation.**

If secure and community custody housing are provided in the same building, the design of the facility shall provide exterior and interior traffic patterns to assure separation of secure and community custody populations.

## **6VAC15-81-1160. Type of construction.**

Perimeter walls shall be of masonry, concrete, stone, metal, or other similar durable nonfabric, noncombustible material. The reviewing authority may require that perimeter walls, floor, and roof or ceiling meet secure perimeter requirements.

## **6VAC15-81-1170. Occupancy.**

Community custody housing shall be designed to consist of multiple occupancy cells or dormitories. If dormitories are utilized and design capacity of community custody exceeds 24, at least two housing units are required.

## **6VAC15-81-1180. Separation of males and females.**

A community custody facility that contains housing units for both males and females shall have the housing units designed and constructed to prohibit normal communication by sight and sound between the two.

## **6VAC15-81-1190. Housing unit size.**

A. Housing units shall be dormitories or multiple occupancy cells.

1. Multiple occupancy cells shall be designed for no more than four inmates per cell and shall be sized in accordance with the current American Correctional Association Standards for Adult Local Detention Facilities. Multiple occupancy cells shall be configured to open into a dayroom.

2. Dayroom space shall contain no less than 35 square feet of space for each inmate for which the unit is designed to serve. Calculation of this space shall not include sally ports, visitation booths, stairs, area under stairs, toilet, shower, and lavatory areas. On the first level an, 18-inch wide path in front of all cell fronts, toilets, and showers shall not be counted as dayroom space.

3. Dormitories shall be constructed to provide 85 square feet of space per inmate for each inmate for which the area is designed. The 85 square feet associated with dormitory space is normally separated into 50 square feet for sleeping and 35 square feet for activity. Calculation of this space shall not include sally ports, stairs, area under stairs, or toilet, shower, and lavatory areas.

B. Ceiling heights in these cells areas shall meet the requirements of the table in 6VAC15-81-930 C 2.

C. Housing units shall be designed to accommodate no more than 48 inmates per dormitory or 64 inmates per housing unit with multiple occupancy cells.

## **6VAC15-81-1200. Building access.**

The facility shall be designed for the capability to monitor ingress and egress to the facility. Space shall be provided

outside of the housing unit for search, work clothes lockers, showers, and toilet facilities. If attached to a secure facility, the primary entrance and exit to the facility shall be separate from that of the secure portion of the facility. Any connection between the secure portion and the community custody portion shall be sally-ported.

## **6VAC15-81-1210. Fixtures and furnishings.**

A. Each housing unit shall be provided with natural light, toilet fixtures, hot and cold running water, drinking fountain or lavatory with a sanitary bubbler, mirrors, bed or bunk, tables and seating, and storage space for personal items to accommodate the number of inmates for whom it is designed.

B. Showers, lavatories, and toilets shall be located within the dayroom or dormitory.

## **6VAC15-81-1220. Services.**

Space or provisions shall be made for food service, laundry, commissary, and other support services.

### Article 3

### Additional Design Features

## **6VAC15-81-1230. Elevators.**

Elevators, if provided, shall be of sufficient size to transport food carts and at least one elevator per facility shall be of sufficient size to transport wheeled stretchers or gurneys.

## **6VAC15-81-1240. Corridors.**

Corridors used for the movement of inmates, stretchers, food carts, etc. shall be constructed to provide a minimum of five feet in width and height meeting the requirements of the table in 6VAC15-81-930 C 2.

## **6VAC15-81-1250. Door swing.**

Door swings for any space utilized by inmates shall open away from the inmate occupied side.

## **6VAC15-81-1260. Voice and visual communication.**

A. The facility shall be equipped with a system capable of communicating with the master control of its associated facility.

B. To enhance operations and security, intercom and CCTV systems shall be considered.

## **6VAC15-81-1270. Telephone.**

Provisions shall be made for inmate telephone and video communication services available at appropriate locations within the facility.

## **6VAC15-81-1280. Multipurpose space.**

A minimum of 15 square feet per inmate expected to use the space at any one time, but not less than 360 square feet of space shall be provided for indoor recreation or multipurpose use.

## **6VAC15-81-1290. Drains, storage, and janitorial closets.**

A. Floor water drains shall be centrally located in all housing units and adjacent to shower, toilet, and lavatory areas.

B. Storage and janitorial closets with mop sinks shall be provided in or in proximity to housing units.

**6VAC15-81-1300. Standby power and emergency release provisions.**

A. A standby power source shall be provided sufficient to sustain, as a minimum, life safety operations, security systems, refrigerators, and freezers.

1. "Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in an emergency situation.

2. Fuel capacity shall be provided for a minimum of 72 hours of operation without refueling.

3. Consideration shall be given to standby power for nonemergency lighting.

B. Emergency release provisions shall be made for unlocking or group release of cell doors in case of fire, power failure, or other emergencies.

Article 4

Construction, Mechanical, Plumbing, and Electrical Requirements

**6VAC15-81-1310. Interior finishes.**

A. All interior exposed walls, partitions, and ceilings shall have a low maintenance, nonabsorbent durable finish.

B. All floor surfaces shall be of a durable, low maintenance, nonabsorbent material.

C. If concrete floor surfaces are used they shall be finished with a sealer or coating.

**6VAC15-81-1320. Windows, doors, and locks.**

A. Doors, windows and frames shall be commercial grade or detention type.

B. Window openings shall be screened, locked, fixed, or otherwise controlled or designed to prevent unauthorized entry or passage of contraband.

C. Magnetic locks are prohibited.

**6VAC15-81-1330. Climate control.**

A. Heat and air conditioning shall be provided in all rooms in the facility so that a temperature not less than 65 degrees F or more than 85 degrees F is maintained.

B. Mechanical, electrical, and laundry spaces may be mechanically ventilated.

C. Special consideration shall be afforded to additional cooling in kitchen, food storage areas, and rooms containing heat sensitive and electronic equipment.

**6VAC15-81-1340. Mechanical.**

A. Thermostats, sensors, control wiring, and control and pneumatic tubing for the mechanical system shall not be inmate accessible.

B. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be

adjusted and checked without the installation of access panels.

**6VAC15-81-1350. Plumbing.**

A. Shower and toilet areas, including ceilings, shall be provided with a durable surface finish to withstand humidity and cleaning.

B. All exposed plumbing shall be kept flush with the walls and ceilings. Exposed pipes shall not be inmate accessible.

C. Hot water for inmates shall be controlled by a temperature limiting device to preclude temperatures in excess of 105 degrees F.

D. Actuating valves provided on lavatories and showers shall be the metering type.

E. Toilets equipped with tanks are prohibited.

**6VAC15-81-1360. Electrical.**

A. All wiring, conductors, and control tubing shall be concealed to the greatest extent possible.

1. Where wiring is exposed and accessible by inmates, it shall be housed in intermediate metal conduit or rigid metal conduit with threaded fittings.

2. Rigid nonmetallic conduit (PVC or CPVC) shall not be used above the ground floor slab except when encapsulated in concrete or in concrete masonry units. For transitions, rigid nonmetallic conduit may extend not more than six inches above floor.

3. Flexible metallic conduit not exceeding six feet in length may be installed above ceilings.

4. Electrical metallic tubing (EMT) may be installed above ceilings. EMT, if utilized, shall have compression fittings.

5. Flexible conduit, if required for a moving part of a device (e.g., pan-tilt-zoom camera), shall not exceed 12 inches exposed and shall be liquid tight or equivalent.

6. Set screw fittings and other types of conduits are not permitted.

B. Surge protection is recommended on power supplies for critical life safety, security, and telephone systems. Surge protection shall be considered on control and alarm circuits that leave the building.

**6VAC15-81-1370. Lighting.**

A. Natural light is required in inmate housing units. Consideration shall be given to providing natural light in renovation projects that provide new inmate housing.

B. Intensity of artificial lighting shall be in accordance with requirements for artificial light in 6VAC15-40, Minimum Standards for Jails and Lockups.

C. Light fixtures shall be a minimum of commercial grade secured with tamper resistant screws.

D. Provisions are required for night lighting.

E. Lights and electrical outlets shall be provided for walk-in type plumbing chases.

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# Regulations

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## **6VAC15-81-1380. Equipment.**

Equipment and fixtures shall be a minimum of commercial grade.

### Part VII

#### Lockup Design and Construction Requirements

## **6VAC15-81-1390. Lockups and cells.**

A. Lockups shall be composed of individual or group cells.

B. Cells shall be designed to contain a minimum of 45 square feet for single occupancy cells plus 15 square feet per inmate for each additional inmate for which the cell is designed.

## **6VAC15-81-1400. Separation.**

Facility shall be designed for the necessary sight and sound separation of males, females, and, if planned, of juveniles and with consideration to PREA.

## **6VAC15-81-1410. Floor drains.**

Sufficient floor water drains shall be provided throughout the lockup to prevent water from standing on the floors.

## **6VAC15-81-1420. Monitoring.**

A. Lockups shall be designed to facilitate monitoring by direct visual observation with backup by CCTV.

B. Consideration shall be given to appropriate traffic patterns; groups of functions; facilitating ease of movement to, from, and within functions; clear sightlines to eliminate blind spots; efficiency and economy of staffing; PREA; and facilitating a smooth, logical, and orderly sequence of operation.

## **6VAC15-81-1430. Fixtures for inmates.**

Each cell shall be provided with a stainless steel combination toilet and lavatory with hot and cold running water with an integral drinking fountain.

## **6VAC15-81-1440. Cell furnishings.**

Each cell shall be equipped with a stationary steel or concrete wall bunk or bench.

## **6VAC15-81-1450. Secure space.**

Secure space shall be provided for inmate records, logs, and storage and inventory of inmate property.

## **6VAC15-81-1460. Telephones.**

Telephones shall be available for use by inmates in the admissions area.

## **6VAC15-81-1470. Visiting space.**

Space for confidential attorney visiting shall be provided.

## **6VAC15-81-1480. Construction requirements.**

All components of cells, sally ports, and the room or space containing the cells shall meet the requirements for maximum security construction in this chapter unless otherwise specified in this part.

VA.R. Doc. No. R16-4552; Filed April 27, 2017, 8:54 a.m.

## **TITLE 8. EDUCATION**

### **STATE BOARD OF EDUCATION**

#### **Fast-Track Regulation**

Title of Regulation: **8VAC20-22. Licensure Regulations for School Personnel (amending 8VAC20-22-90).**

Statutory Authority: § 22.1-298.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 12, 2017.

Effective Date: July 31, 2017.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Basis: The amendments to the Licensure Regulations for School Personnel are required to comply with Chapter 389 of the 2016 Acts of Assembly, which amended and reenacted § 22.1-298.1 of the Code of Virginia requiring the Board of Education to provide for the provisional license.

The board's overall regulatory authority may be found under § 22.1-16 of the Code of Virginia.

Purpose: Chapter 389 of the 2016 Acts of Assembly requires the Board of Education to provide for the issuance of a provisional license, valid for a period not to exceed three years, to any former member of the Armed Forces of the United States or the Virginia National Guard who has received an honorable discharge and has the appropriate level of experience or training but does not meet the requirements for a renewable license. The change in the regulations will allow veterans to apply directly to the Department of Education to determine their eligibility for a license. Virginia, as well as the nation, is experiencing shortages of teachers. This regulatory action should increase the pool of individuals to teach in the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is for regulations expected to be noncontroversial. This revision is noncontroversial because the amendments are required by statute and allow veterans to apply for a provisional (veteran) license through an alternate route upon the recommendation of an employing school division or, if the veteran is not employed as a teacher, to seek a statement of his or her eligibility for a provisional (veteran) license.

Substance: The amendments establish a veterans' provisional license, which allows any former member of the Armed Forces of the United States or of the Virginia National Guard who has received an honorable discharge, to apply directly to the Department of Education and receive an evaluation or statement of eligibility for a license.

Issues: The advantage of the amendment is that it will allow any former member of the Armed Forces of the United States

or the Virginia National Guard who has received an honorable discharge to apply directly to the Department of Education and receive an evaluation for a license. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 389 of the 2016 Virginia Acts of Assembly, the Board of Education (Board) proposes to establish an alternate route for veterans to obtain a provisional license to teach.

Result of Analysis. The benefits likely exceed the costs.

Estimated Economic Impact. The legislation and proposed regulation specify that in order to qualify for the veteran alternate route to provisional licensure, the individual must be a former member of the armed forces of the United States or the Virginia National Guard who has received an honorable discharge. The current regulation already includes a career switcher alternate route to provisional licensure. According to the Department of Education (DOE), other than requiring a military background to qualify, practically speaking the only difference between the existing career switcher alternate route and the proposed veteran alternate route is that veterans who are applying for the provisional license may submit an application packet directly to DOE to request an evaluation for a license. They do not need to wait until a Virginia school division submits the request to DOE. The Department would provide the veteran with a letter indicating their eligibility (if they are in fact eligible) that he or she could use in pursuit of a position at a school. Having the eligibility letter could help facilitate employment for veterans. The proposed addition of this route to teacher licensure for veterans may require a small additional amount of time for DOE employees to provide the evaluation, but that cost is likely outweighed by the potential benefit of easing the employment process for veterans.

Businesses and Entities Affected. The proposed amendments affect veterans considering teaching in Virginia and the 132 local school divisions in the Commonwealth.

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

Projected Impact on Employment. The proposed amendments may moderately increase the likelihood that veterans become teachers.

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 affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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

Summary:

*Pursuant to Chapter 389 of the 2016 Acts of Assembly, the amendments provide for the issuance of a provisional license, valid for a period not to exceed three years, to any former member of the Armed Forces of the United States or the Virginia National Guard who has received an honorable discharge and has the appropriate level of experience or training but does not meet the requirements for a renewable license.*

**8VAC20-22-90. Alternate routes to licensure.**

A. Career switcher alternate route to licensure for career professions. An alternate route is available to career switchers who seek teaching endorsements preK through grade 12 with the exception of special education.

1. An individual seeking a Provisional License through the career switcher program must meet the following prerequisite requirements:
  - a. An application process;
  - b. A baccalaureate degree from a regionally accredited college or university;
  - c. The completion of requirements for an endorsement in a teaching area or the equivalent through verifiable experience or academic study;
  - d. At least five years of full-time work experience or its equivalent; and
  - e. Virginia qualifying scores on the professional teacher's assessments as prescribed by the Board of Education.
2. The Provisional License is awarded at the end of Level I preparation. All components of the career switcher alternate route for career professions must be completed by the candidate.
3. The Level I requirements must be completed during the course of a single year and may be offered through a

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# Regulations

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variety of delivery systems, including distance learning programs. If an employing agency recommends extending the Provisional License for a second year, the candidate will enter Level III of the program. Career switcher programs must be certified by the Virginia Department of Education.

a. Level I preparation. Intensive Level I preparation includes a minimum of 180 clock hours of instruction, including field experience. This phase includes, ~~but is not limited to,~~ curriculum and instruction, including technology, reading, and other specific course content relating to the Standards of Learning, differentiation of instruction, ~~classroom/behavior~~ classroom and behavior management, instructional design based on assessment data, and human growth and development.

b. Level II preparation during first year of employment.

(1) Candidate seeks employment in Virginia with the one-year Provisional License.

(2) Continued Level II preparation during the first year of employment with a minimum of five seminars that expand the intensive preparation requirements listed in subdivision 3 a of this subsection. The five seminars will include a minimum of 20 cumulative instructional hours. A variety of instructional delivery techniques will be utilized to implement the seminars.

(3) One year of successful, full-time teaching experience in a Virginia public or accredited nonpublic school under a one-year Provisional License. A trained mentor must be assigned to assist the candidate during the first year of employment. Responsibilities of the mentor include, ~~but are not limited to,~~ the following:

(a) Collaborate with the beginning teacher in the development and implementation of an individualized professional development plan;

(b) Observe, assess, coach, and provide opportunities for constructive feedback, including strategies for self-reflection;

(c) Share resources and materials;

(d) Share best instructional, assessment, and organizational practices; classroom and behavior management strategies; and techniques for promoting effective communication; and

(e) Provide general support and direction regarding school policies and procedures.

(4) Upon completion of Levels I and II of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to apply for a five-year, renewable license. Renewal requirements for the regular license will be subject to current regulations of the Board of Education.

c. Level III preparation, if required.

(1) Post preparation, if required, will be conducted by the Virginia employing educational agency to address the areas where improvement is needed as identified in the candidate's professional improvement plan; and

(2) Upon completion of Levels I, II, and III of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to receive a five-year renewable license.

4. Verification of program completion will be documented by the certified program provider and the division superintendent or designee.

5. Certified providers implementing a career switcher program may charge a fee for participation in the program.

B. An alternate route is available to individuals employed by an educational agency who seek teaching endorsements preK through grade 12. Individuals must complete the requirements for the regular, five-year license within the validity period of the provisional license.

1. An individual seeking a license through this alternate route must have met the following requirements:

a. ~~Are~~ Is entering the teaching field through the alternate route to licensure upon the recommendation of the Virginia employing educational agency;

b. ~~Hold~~ Has a baccalaureate degree from a regionally accredited college or university with the exception of individuals seeking the Technical Professional License;

c. ~~Have~~ Has met requirements for the endorsement area; and

d. ~~Need~~ Needs to complete an allowable portion of professional studies and licensure requirements.

2. The professional studies requirements for the appropriate level of endorsement sought must be completed. A Virginia educational agency may submit to the Superintendent of Public Instruction for approval an alternate program to meet the professional studies requirements. The alternate program must include training (seminar, internship, coursework, etc.) in human growth and development, curriculum and instructional procedures (including technology), instructional design based on assessment data, classroom and behavior management, foundations of education and reading.

3. One year of successful, full-time teaching experience in the appropriate teaching area in a Virginia public or accredited nonpublic school must be completed. A fully licensed experienced teacher must be available in the school building to assist the beginning teacher employed through the alternate route.

C. Alternate route in special education. The Provisional License is a three-year nonrenewable teaching license issued to an individual employed as a special education teacher in a

public school or a nonpublic special education school in Virginia who does not hold the appropriate special education endorsement. To be issued the Provisional License through this alternate route, an individual must:

1. Be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency;
2. Hold a baccalaureate degree from a regionally accredited college or university;
3. Have an assigned mentor endorsed in special education; and
4. Have a planned program of study in the assigned endorsement area, make progress toward meeting the endorsement requirements each of the three years of the license, and have completed coursework in the competencies of foundations for educating students with disabilities and an understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with disabilities. A survey course integrating these competencies would satisfy this requirement. The Provisional License through this alternate route shall not be issued without the completion of these prerequisites.

D. Alternate programs at institutions of higher education or Virginia school divisions. Alternate programs developed by institutions of higher education (i) recognize the unique strengths of prospective teachers from nontraditional backgrounds and (ii) prepare these individuals to meet the same standards that are established for others who are granted a license through an alternate route.

E. Experiential learning. Individuals applying for an initial license through the alternate route as prescribed by the Board of Education must meet the following criteria to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area:

1. Hold a baccalaureate degree from a regionally accredited college or university;
2. Have at least five years of documented full-time work experience that may include specialized training related to the endorsement sought; and
3. Have met the qualifying score on the content knowledge assessment prescribed by the Board of Education.

The criteria do not apply to teachers of special education and elementary education (preK-3 and preK-6).

F. An alternate route is available to former members of the Armed Forces of the United States or the Virginia National Guard who have received an honorable discharge and who are seeking a Provisional (Veteran) License. Individuals must complete the requirements for the five-year renewable license within the validity period of the Provisional (Veteran) License.

An individual seeking a Provisional License through the veteran alternate route must meet the following requirements:

1. Is entering the teaching field through the alternate route to licensure upon the recommendation of the Virginia employing educational agency. If the veteran is not employed, a statement of the individual's eligibility for a Provisional (Veteran) License will be provided;
2. Holds a baccalaureate degree from a regionally accredited college or university with the exception of individuals seeking the Technical Professional License; and
3. Has met the appropriate level of experience or training required for the teaching endorsement area. The veteran may meet the endorsement requirements by passing a rigorous academic subject test prescribed by the Board of Education, if applicable. This testing option does not apply to individuals who are seeking an early/primary preK-3 or elementary education preK-6 endorsement or who are seeking a technical Professional License, Vocational Evaluator License, Pupil Personnel Services License, School Manager License, or Division Superintendent License.

G. Every teacher seeking an initial license in the Commonwealth with an endorsement in the area of career and technical education shall have an industry certification credential in the area in which the teacher seeks endorsement. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a Provisional License to allow time for the teacher to attain such credential.

VA.R. Doc. No. R17-4987; Filed May 11, 2017, 5:03 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Final Regulation

Title of Regulation: 12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (amending 12VAC5-490-10, 12VAC5-490-20).

Statutory Authority: § 32.1-229.1 of the Code of Virginia.

Effective Date: July 12, 2017.

Agency Contact: Steve Harrison, Director, Division of Radiological Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email steve.harrison@vdh.virginia.gov.



# Regulations

**Summary:**

*The amendments raise the registration fee for x-ray machines inspected every three years and add three new fee categories for the annual registration and periodic inspection of nonmedical x-ray devices.*

**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.

**12VAC5-490-10. Registration fees.**

A. All operators or owners of diagnostic ~~X-ray~~ x-ray machines used in the healing arts and capable of producing radiation shall pay the following registration fee:

1. \$50 for each machine and additional tube(s) that have a required annual inspection, collected annually; and \$50
2. \$60 for each machine and additional tube(s) that have a required inspection every three years, collected every three years.

B. All operators or owners of therapeutic ~~X-ray~~ x-ray, particle accelerators, and teletherapy machines used in the healing arts capable of producing radiation shall pay the following annual registration fee:

1. \$50 for each machine with a maximum beam energy of less than 500 KVp;
2. \$50 for each machine with a maximum beam energy of 500 KVp or greater.

C. All operators or owners of baggage, cabinet or analytical, or industrial x-ray machines capable of producing radiation shall pay the following annual registration fee:

1. \$20 for each machine used for baggage inspection;
2. \$25 for each machine identified as cabinet or analytical; and
3. \$50 for each machine used for industrial radiography.

D. Where the operator or owner of the aforementioned machines is a state agency or local government, that agency is exempt from the payment of the registration fee.

**12VAC5-490-20. Inspection fees and inspection frequencies for x-ray machines.**

The following table lists the fees that shall be charged for surveys requested by the registrant and performed by a Department of Health inspector, as well as the required inspection frequencies for each type of x-ray machine:

Type	Cost Per Tube	Inspection Frequency
General Radiographic (includes: Chiropractic and Special Purpose X-ray Systems)	\$230	Annually

Fluoroscopic, C-arm Fluoroscopic	\$230	Annually
Combination (General Purpose-Fluoroscopic)	\$460	Annually
Dental Intraoral and Panographic	\$90	Every 3 years
Veterinary	\$160	Every 3 years
Podiatric	\$90	Every 3 years
Cephalometric	\$120	Every 3 years
Bone Densitometry	\$90	Every 3 years
Combination (Dental Panographic and Cephalometric)	\$210	Every 3 years
Shielding Review for Dental Facilities	\$250	Initial/Prior to use
Shielding Review for Radiographic, Chiropractic, Veterinary, Fluoroscopic, or Podiatric Facilities	\$450	Initial/Prior to use
Baggage X-ray Unit	\$100	Every 5 years
Cabinet or Analytical X-ray Unit	\$150	Every 3 years
Industrial Radiography X-ray Unit	\$200	Annually

V.A.R. Doc. No. R16-4550; Filed May 23, 2017, 9:10 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Proposed Regulation**

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-570).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 11, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and § 32.1-324 of the Code of Virginia authorizes the Director of

the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

In addition, Chapter 694 of the 2016 Acts of Assembly created a new section of the Virginia Administrative Process Act that provides for a process by which appellants may petition an agency to reconsider its final case decision.

**Purpose:** Chapter 694 of the 2016 Acts of Assembly created a new section of the Virginia Administrative Process Act, § 2.2-4023.1 of the Code of Virginia, which provides for a process by which appellants may petition an agency to reconsider a final case decision made pursuant to § 2.2-4020 of the Code of Virginia. Chapter 694 further specifically authorizes the agency to promulgate regulations that specify the scope of that reconsideration review. DMAS promulgated an emergency regulation, and this proposed stage seeks to make those changes permanent. The regulation creates 12VAC30-20-570, which is needed to accomplish the goal of establishing and defining the scope of review for reconsiderations conducted in accordance with § 2.2-4023.1.

This proposed regulatory action is essential to protect the health, safety, and welfare of citizens by ensuring the integrity of the Department of Medical Assistance Services appeals process by ensuring that it is in accordance with the Code of Virginia so that individuals and providers may challenge health care determinations made by the state Medicaid agency.

**Substance:** Prior to the newly enacted § 2.2-4023.1, there was no process by which an appellant could petition the agency director to reconsider a final agency case decision made pursuant to § 2.2-4020. In § 2.2-4023.1, the General Assembly provided a procedural timeline for the reconsideration process and authorized the agency to enact emergency regulations to define the scope of the reconsideration review.

Both the emergency regulation and the current proposed regulation specify the scope of the reconsideration review, as authorized by § 2.2-4023.1. The proposed amendments provide that the scope of review is upon the record of the case decision made pursuant to § 2.2-4020. The proposed amendments also provide that reconsideration does not authorize the reopening of the formal administrative hearing or acceptance of evidence or testimony not part of the record of the case, consistent with 1st Stop Health Services v. DMAS, 63 Va. App. 266, 756 S.E.2d 183 (2014).

**Issues:** The advantages to the public include transparency and clarity with regard to the final agency decision process. The primary advantage of this regulation is that it will permit DMAS to comply with a legislative mandate. This regulation does not create any disadvantages to the public, the agency, or the Commonwealth.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation will make permanent an emergency regulation adopting the reconsideration process for a final agency decision as laid out in Chapter 694 of the 2016 Acts of Assembly and specifying the scope of evidence that may be considered during that process.

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

Estimated Economic Impact. Chapter 694 of the 2016 Acts of Assembly<sup>1</sup> established a reconsideration process for a final agency decision and authorized promulgation of emergency regulations to specify the scope of evidence that may be considered during that process. The director of the Department of Medical Assistance Services promulgated an emergency regulation on December 6, 2016, adopting the reconsideration process by reference as laid out in the statute.<sup>2</sup> Establishment of the reconsideration process affords an additional chance for a petitioner to make its case before the director, and avoid having to resolve the issue in the circuit court. Thus, the reconsideration process has the benefit of potentially avoiding higher litigation costs for both the petitioner and the agency. However, a petitioner has a right to reconsideration process under the statute with or without this proposed change in regulatory language. Therefore, the main impact of this proposed change is to clarify that the reconsideration process established in the statute applies to final decisions of the Department of Medical Assistance Services.

In addition, the amended statute allowed and the emergency regulation specified that the scope of evidence while reconsidering a final appeal decision is limited to what is in the case record of the formal appeal. In other words, the director's decision shall be based on the testimony and other evidentiary documents submitted previously during the formal appeal. The proposed regulation specifically excludes from consideration any testimony or documents that were not part of the formal appeal case record. The purpose of this provision is to clarify that the establishment of a reconsideration process is not to allow a petitioner to reopen and reargue a case with new evidence. In general, such a rule is consistent with evidentiary rules applicable to reconsideration of judicial decisions where litigants are allowed only one bite at the apple.

The proposed change pertaining to the scope of review is consistent with a recent Virginia Court of Appeals decision<sup>3</sup> where a provider was initially ordered retraction of overpayments after an audit due to improper documentation supporting the claims paid. During the administrative appeal of the audit, the provider used new evidence to show that although its payments lacked supporting evidence, it was not overpaid. The hearing officer recommended reversal of the order to retract payments, but the director did not reverse the

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order. The case was appealed to a circuit court. The circuit court affirmed the director's decision, which was also appealed. In the end, the Court of Appeals affirmed the director's decision and recognized that the director could not use the new evidence as the basis of her decision.

This proposed change is beneficial because it reduces uncertainty and provides guidance by clarifying that reconsideration does not authorize the reopening of the formal administrative hearing or acceptance of new evidence or testimony. Also, prohibition of consideration of new evidence after a final decision has been rendered would help bring finality to a dispute sooner and avoid potential delays and costs.

**Businesses and Entities Affected.** The proposed regulation will affect individuals or health care providers that file a petition for reconsideration of a final decision. Approximately 60 final agency decisions are issued each year. It is expected that only a subset of the decisions will be petitioned for reconsideration.

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

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

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

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

**Small Businesses:**

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

**Costs and Other Effects.** The proposed regulation does not introduce any direct costs or other effects on small businesses.

**Alternative Method that Minimizes Adverse Impact.** No adverse impact on small businesses is expected.

**Adverse Impacts:**

**Businesses.** The proposed amendment does not have an adverse impact on non-small businesses.

**Localities.** The proposed amendment will not adversely affect localities.

**Other Entities.** The proposed amendment will not adversely affect other entities.

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

**Summary:**

*Pursuant to Chapter 694 of the 2016 Acts of Assembly, the proposed regulation establishes a reconsideration process for a final agency decision and specifies the scope of testimony or documentary submissions that may be considered during that process.*

## **12VAC30-20-570. Reconsideration of final agency decision.**

**A. Reconsiderations of a DMAS final appeal decision issued on a formal appeal conducted pursuant to § 2.2-4020 of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the Code of Virginia.**

**B. The DMAS director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.**

V.A.R. Doc. No. R17-4817; Filed May 19, 2017, 11:46 a.m.

## **Fast-Track Regulation**

**Titles of Regulations: 12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10, 12VAC30-30-20, 12VAC30-30-40; adding 12VAC30-30-5).**

**12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10, 12VAC30-40-90, 12VAC30-40-100, 12VAC30-40-150, 12VAC30-40-220, 12VAC30-40-280, 12VAC30-40-290; repealing 12VAC30-40-345).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 12, 2017.

**Effective Date:** July 27, 2017.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

**Basis:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

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<sup>1</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0694>

<sup>2</sup> See § 2.2-4023.1 of the Code of Virginia.

<sup>3</sup> 1st Stop Health Services v. DMAS 63 Va. App. 266, 756 S.E.2d 183 (2014).

The Code of Federal Regulations at 42 CFR 435.603 details the Affordable Care Act (ACA) requirement that DMAS implement the modified adjusted gross income (MAGI) methodology to determine the financial eligibility of certain groups of individuals for Medicaid. The amendments in this package implement the federal guidance as directed.

Purpose: The purpose of this action is to bring state regulations into line with federal rules and current Virginia practice. This action does not directly affect the health, safety, and welfare of citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action as the changes are noncontroversial. The changes have been approved by the Centers for Medicare and Medicaid Services (CMS) and have been in place since mid-2014 as required by federal regulations. The current changes to the Virginia Administrative Code will comport state regulations with federal rules and current Virginia practice.

Substance: Prior to January 1, 2014, eligibility for Medicaid families and children groups was based on the rules of the old Aid to Families with Dependent Children (AFDC) program. This program ended in 1997 when it was replaced by Congress with block grants to the states. However, the Medicaid program continued to use those rules in determining eligibility for children younger than age 19 years, parent/caretaker relatives and pregnant women.

In addition, prior to January 1, 2014, there was no provision for covering former foster care children younger than age 26 years.

With the implementation of the use of MAGI rules for determining eligibility as required by the ACA, rules based on the old AFDC program can no longer be used. States are mandated to use MAGI rules in determining eligibility for those populations. States are also required to cover the group of former foster care children.

The Commonwealth has a mandate from CMS to use MAGI rules in determining eligibility as required by the ACA. Additionally, the Commonwealth has a mandate to cover former foster care children. There is no option except to use the new federal rules. DMAS submitted its MAGI State Plan changes to CMS, and they have been approved.

Issues: These changes create no disadvantages to the public, the agency, the Commonwealth, the regulated community, or the public. The advantages of these changes are that they will bring DMAS rules into compliance with federal requirements, which will allow DMAS to continue to collect federal matching funds.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. On behalf of the Board of Medical Assistance Services, the Director of the Department of Medical Assistance Services proposes to amend these regulations to reflect a change in

Medicaid eligibility methodology mandated by the federal Affordable Care Act (ACA).

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

Estimated Economic Impact. Prior to January 1, 2014, eligibility for Medicaid Families and Children groups was based on the rules of the old Aid to Families with Dependent Children (AFDC) program. This program ended in 1997 when it was replaced by Congress with block grants to the states. However, the Medicaid program continued to use those rules in determining eligibility for children younger than the age 19, parent/caretaker relatives and pregnant women. In addition, prior to January 1, 2014, there was no provision for covering former foster care children younger than age 26.

Effective January 1, 2014, ACA required eligibility for health coverage under all health insurance affordability programs -- including Medicaid -- to be based on a new Modified Adjusted Gross Income (MAGI) methodology. Calculating applicants' MAGI eligibility entails defining household composition and executing income-counting procedures based on Internal Revenue Service rules. These changes were required by the federal law to be made in State Plans for Medical Assistance.

These changes impact eligibility determinations for children younger than age 19, certain groups of children younger than age 21, pregnant women, and parent/caretaker relatives and therefore, require a change in current regulations. An additional change mandated by the ACA requires states to cover former foster care children between the ages of 18 and 26 who were receiving foster care and Medicaid on their 18th birthday and subsequently aged out of the program.

With the implementation of the use of MAGI rules for determining eligibility as required by the ACA, rules based on the old AFDC program can no longer be used. States are mandated to use MAGI rules in determining eligibility for those populations. States are also required to cover the group of former foster care children. The Commonwealth has a mandate from CMS to use MAGI rules in determining eligibility as required by the ACA. Additionally, the Commonwealth has a mandate to cover former foster care children. There is no option except to use the new federal rules. DMAS submitted its MAGI State Plan changes to CMS and they have been approved. Pursuant to the federal mandate, the adoption of the MAGI methodology has already been adopted into the State Plan and is in effect. Thus, the proposal to amend these regulations to reflect the federally mandated change in Medicaid eligibility methodology will have no impact beyond reducing the likelihood that readers of the regulations are misled as toward the methodology that is in effect.

Businesses and Entities Affected. The proposed amendments affect readers of these regulations who may have been misled as to the Medicaid eligibility methodology that is in effect.

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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 adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning modified adjusted gross income (MAGI) methodology. The agency concurs with this analysis.

Summary:

*As required by federal law, the amendments establish that eligibility for health coverage under all health insurance affordability programs, including Medicaid, is based on the modified adjusted gross income methodology.*

## 12VAC30-30-5. Definitions.

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

"Act" means the Social Security Act (42 USC §§ 301 through 1397mm).

"MAGI" means modified adjusted gross income and is an eligibility methodology for how income is counted and how household composition and family size are determined. MAGI is based on federal tax rules for determining adjusted gross income.

"SSI" means supplemental security income.

"SSP" means state supplementary payment.

"Title IV-A" means Title IV, Part A of the Social Security Act, 42 USC §§ 601 through 619.

"Title IV-A agency" means the agency described in 42 USC § 602(a)(4).

"Title XIX" means Title XIX of the Social Security Act, 42 USC §§ 1396 through 1396w-5.

## **12VAC30-30-10. Mandatory coverage: categorically needy and other required special groups.**

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services. The following groups shall be eligible for medical assistance as specified:

### 1. Recipients of AFDC.

#### a. The approved state AFDC plan includes:

~~(1) Families with an unemployed parent for the mandatory six-month period and an optional extension of 0 months.~~

~~(2) AFDC children age 18 who are full time students in a secondary school or in the equivalent level of vocational or technical training.~~

~~b. The standards for AFDC payments are listed in 12VAC30-40-220.~~

### 2. Deemed recipients of AFDC.

~~a. Individuals denied a Title IV A cash payment solely because the amount would be less than \$10.~~

~~b. Effective October 1, 1990, participants in a work supplementation program under Title IV A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program, in accordance with § 482(e)(6) of the Act.~~

~~c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.~~

~~d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support and meets the requirements of § 406(h) of the Act.~~

~~e. Individuals deemed to be receiving AFDC who meet the requirements of § 473(b)(1) or (2) for whom an adoption of assistance agreement is in effect or foster care maintenance payments are being made under Title IV E of the Act.~~

~~3. Effective October 1, 1990, qualified family members who would be eligible to receive AFDC under § 407 of the Act because the principal wage earner is unemployed.~~

~~4. Families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards entitled up to 12 months of extended benefits in accordance with § 1925 of the Act.~~

5. Individuals who are ineligible for AFDC solely because of eligibility requirements that are specifically prohibited under Medicaid. Included are:

a. Families denied AFDC solely because of income and resources deemed to be available from:

(1) Stepparents who are not legally liable for support of stepchildren under a state law of general applicability;

(2) Grandparents;

(3) Legal guardians; and

(4) Individual alien sponsors (who are not spouses of the individual or the individual's parent).

b. Families denied AFDC solely because of the involuntary inclusion of siblings who have income and resources of their own in the filing unit.

c. Families denied AFDC because the family transferred a resource without receiving adequate compensation.

6. Individuals who would be eligible for AFDC except for the increases in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972 and who were receiving cash assistance in August 1972.

a. Includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in the state's August 1972 plan).

b. Includes persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

7. Qualified pregnant women and children.

a. A pregnant woman whose pregnancy has been medically verified who:

(1) Would be eligible for an AFDC cash payment if the child had been born and was living with her;

(2) Is a member of a family that would be eligible for aid to families with dependent children of unemployed parents if the state had an AFDC unemployed parents program; or

(3) Would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

b. Children born after September 30, 1973 (specify optional earlier date), who are under age 19 and who would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

12VAC30-40-280 and 12VAC30-40-290 describe the more liberal methods of treating income and resources under § 1902(r)(2) of the Act.

8. Pregnant women and infants under one year of age with family incomes up to 133% of the federal poverty level who are described in §§ 1902(a)(10)(A)(i)(IV) and

1902(l)(A) and (B) of the Act. The income level for this group is specified in 12VAC30-40-220.

9. Children:

a. Who have attained one year of age but have not attained six years of age, with family incomes at or below 133% of the federal poverty levels.

b. Born after September 30, 1983, who have attained six years of age but have not attained 19 years of age, with family incomes at or below 100% of the federal poverty levels.

Income levels for these groups are specified in 12VAC30-40-220.

10. Individuals other than qualified pregnant women and children under subdivision 7 of this section who are members of a family that would be receiving AFDC under § 407 of the Act if the state had not exercised the option under § 407(b)(2)(B)(i) of the Act to limit the number of months for which a family may receive AFDC.

11. a. A woman who, while pregnant, was eligible for, applied for, and receives Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period (beginning on the last day of her pregnancy) and for any remaining days in the month in which the 60th day falls.

b. A pregnant woman who would otherwise lose eligibility because of an increase in income (of the family in which she is a member) during the pregnancy or the postpartum period which extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

1. Parents and other caretaker relatives of dependent children with household income at or below a standard established by the state in 12VAC30-40-100 consistent with 42 CFR 435.110 and §§ 1902(a)(10)(A)(i)(I) and 1931(b) of the Social Security Act. Individuals qualifying under this eligibility group shall meet the following criteria:

a. Parents, other caretaker relatives (defined at 42 CFR 435.4) including pregnant women, or dependent children (defined at 42 CFR 435.4) younger than the age of 18 years. This group includes individuals who are parents or other caretaker relatives of children who are 18 years of age provided the children are full-time students in a secondary school or the equivalent level of vocational or technical training and are expected to complete such school or training before their 19th birthday.

b. Spouses of parents and other caretaker relatives shall include other relatives of the child based on blood (including those of half-blood), adoption, or marriage. Other relatives of a specified degree of the dependent child shall include any blood relative (including those of

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half-blood) and including (i) first cousins; (ii) nephews or nieces; (iii) persons of preceding generations as denoted by prefixes of grand, great, or great-great; (iv) stepbrother; (v) stepsister; (vi) a relative by adoption following entry of the interlocutory or final order, whichever is first; (vii) the same relatives by adoption as listed in this subdivision 1 b; and (viii) spouses of any persons named in this subdivision 1 b even after the marriage is terminated by death or divorce.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

2. Women who are pregnant or postpartum with household income at or below a standard established by the Commonwealth in 12VAC30-40-100, consistent with 42CFR 435.116 and §§ 1902(a)(10)(A)(i)(III) and (IV), 1902(a)(10)(A)(ii)(I) and (IX), and 1931(b) of the Act. Individuals qualifying under this eligibility group shall be pregnant or postpartum as defined in 42 CFR 435.4.

a. A woman who, while pregnant, was eligible for, applied for, and received Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period, beginning on the last day of her pregnancy, and for any remaining days in the month in which the 60th day falls.

b. A pregnant woman who would otherwise lose eligibility because of an increase in income of the family in which she is a member during the pregnancy or the postpartum period that extends through the end of the month in which the 60-day period, beginning on the last day of pregnancy, ends.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

3. Infants and children younger than the age of 19 years with household income at or below standards based on this age group, consistent with 42 CFR 435.118 and §§ 1902(a)(10)(A)(i)(III), (IV) and (VIII); 1902(a)(10)(A)(ii)(IV) and (IX); and 1931(b) of the Act. Children qualifying under this eligibility group shall meet the following criteria:

a. They are younger than the age of 19 years; and

b. They have a household income at or below the standard established by the Commonwealth.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

4. Former foster care children younger than the age of 26 years who are not otherwise mandatorily eligible in another Medicaid classification, who were on Medicaid and in foster care when they turned age 18 years, or who aged out of foster care. Individuals qualifying under this eligibility group shall meet the following criteria:

a. They shall be younger than the age of 26 years;

b. They shall not be otherwise eligible for and enrolled for mandatory coverage under the state plan; and

c. They were in foster care under the responsibility of any state or a federally recognized tribe and were enrolled in Medicaid under the state plan of that state when they turned age 18 years or at the time of aging out of the foster care program.

5. Families terminated from coverage under § 1931 of the Act solely because of earnings or hours of employment shall be entitled to up to 12 months of extended benefits in accordance with § 1925 of the Act.

~~12. 6.~~ A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year from birth, as long as he remains a resident of the Commonwealth. A redetermination of eligibility must be completed on behalf of the deemed child at age one year and annually thereafter so long as he remains eligible.

~~13. 7.~~ Aged, blind, and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes persons who qualify for benefits under § 1619(a) of the Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described below: (1) See in 12VAC30-30-40.

(2) Financial criteria are described in 12VAC30-40-10.

~~14. 8.~~ Qualified severely impaired blind and disabled individuals under age 65 years who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplemental supplementary payment (SSP) under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

- (1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;
- (2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;
- (3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;
- (4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and
- (5) Have earnings that are not sufficient to provide for himself ~~or herself~~ a reasonable equivalent of the Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he ~~or she~~ did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 1619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

~~15.~~ 9. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

- a. Are at least 18 years of age; and
- b. Lose SSI eligibility because they become entitled to Old Age, Survivor, and Disability Insurance (OASDI) child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absence their OASDI eligibility.

The state does not apply more restrictive income eligibility requirements than those under SSI.

~~16.~~ 10. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

~~17.~~ 11. Individuals receiving mandatory state supplements.

~~18.~~ 12. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for ~~OAA~~ Old Age Assistance, ~~AB~~ Aid to the Blind, ~~APTD~~ Aid to the Permanently and Totally Disabled, or ~~AABD~~ Aid to the Aged, Blind, and Disabled and the spouse continues to meet the December 1973 requirements for have his ~~or her~~ needs included in computing the cash payment.

In December 1973, Medicaid coverage of the essential spouse was limited to: the aged; the blind; and the disabled.

~~19.~~ 13. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

- a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;
- b. Remain institutionalized; and
- c. Continue to need institutional care.

~~20.~~ 14. Blind and disabled individuals who:

- a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria;
- b. Were eligible for Medicaid in December 1973 as blind or disabled; and
- c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

~~21.~~ 15. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972.

This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

~~22.~~ 16. Individuals who:

- a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and
- b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that



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caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

~~23-~~ 17. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

~~24-~~ 18. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

~~25-~~ 19. Qualified Medicare beneficiaries:

- a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);
- b. Whose income does not exceed 100% of the federal level; and
- c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

{Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.}

~~26-~~ 20. Qualified disabled and working individuals:

- a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;
- b. Whose income does not exceed 200% of the federal poverty level;
- c. Whose resources do not exceed twice the maximum standard under SSI; and
- d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

(Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.)

~~27-~~ 21. Specified low-income Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);

b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

{Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.}

~~28-~~ 22. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI. Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

## **12VAC30-30-20. Optional groups other than the medically needy.**

The Title ~~IV-A~~ IV-A agency determines eligibility for Title XIX services. The following groups are eligible:

~~1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.~~

~~2. 1.~~ Individuals who would be eligible for ~~AFDC~~, SSI or an optional state supplement as specified in 42 CFR 435.230; if they were not in a medical institution.

~~3. 2.~~ A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a nursing facility (NF) or an ICF/MR intermediate care facility for individuals with intellectual disabilities (ICF/IID), who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's § 1915(c) waiver under which this group is or these groups are covered. In the event an existing § 1915(c) waiver is amended to cover this group or these groups, this option is effective on the effective date of the amendment.

~~4.~~ 3. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

~~5.~~ 4. The state Commonwealth does not cover all individuals who are not described in § 1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who are ~~under~~ younger than the age of 21 years. The state Commonwealth does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

(1) In foster homes (and are ~~under~~ younger than the age of 21 years).

(2) In private institutions (and are ~~under~~ younger than the age of 21 years).

(3) In addition to the group under subdivisions ~~5~~ 4 a (1) and ~~4~~ a (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are ~~under~~ younger than the age of 21 years).

b. Individuals in adoptions subsidized in full or part by a public agency (who are ~~under~~ younger than the age of 21 years).

c. Individuals in NFs (who are ~~under~~ younger than the age of 21 years). NF services are provided under this plan.

d. In addition to the group under subdivision ~~5~~ 4 c of this section, individuals in ICFs/MR ICF/IIDs (who are ~~under~~ younger than the age of 21 years).

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

~~6.~~ 5. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

~~a. Was~~ was eligible for Medicaid under the state's approved Medicaid plan; ~~or~~

~~b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.~~

The state Commonwealth covers individuals ~~under~~ younger than the age of 21 years.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

~~7.~~ 6. Section 1902(f) states and SSI criteria states without agreements under §§ 1616 and 1634 of the Act. The following groups of individuals who receive a state

supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

a. Based on need and paid in cash on a regular basis.

b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.

c. Available to all individuals in each classification and available on a statewide basis.

d. Paid to one or more of the following classifications of individuals:

(1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12VAC30-40-250.

~~8.~~ 7. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12VAC30-40-220.

The state Commonwealth covers all individuals as described ~~above~~ in this subdivision.

~~9.~~ 8. Individuals who are 65 years of age or older or who are disabled as determined under § 1614(a)(3) of the Act, whose income does not exceed the income level specified in 12VAC30-40-220 for a family of the same size, and whose resources do not exceed the maximum amount allowed under SSI.

~~10.~~ 9. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

~~11. Women~~ 10. Individuals who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with § 1504 of the Public Health Service Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These ~~women~~ individuals are not otherwise covered under creditable coverage, as defined in § 2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

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~~42-~~ 11. Individuals who may qualify for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act) if they meet the requirements for the 80% eligibility group described in 12VAC30-40-220, as well as the requirements described in 12VAC30-40-105 and 12VAC30-110-1500.

## **12VAC30-30-40. Reasonable classifications of individuals under younger than the age of 21, 20, 19, and or 18 years.**

See The reasonable classifications of individuals younger than the age of 21, 20, 19, or 18 years are set out in subdivision 5 4 of 12VAC30-30-20. See and subdivision 5 of 12VAC30-30-30.

### Part I

#### General Conditions of Eligibility

## **12VAC30-40-10. General conditions of eligibility.**

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II (12VAC30-40-20 through 12VAC30-40-80) and III (12VAC30-40-90 through 12VAC30-40-210) of this chapter) to receive services.

2. Meets the applicable nonfinancial eligibility conditions.

a. For the categorically needy:

(1) Except as specified under subdivisions 2 a (2) and 2 a (3) of this section, for ~~AFDC-related~~ Title IV-E individuals, ~~meets covered under § 1902(a)(10)(A)(i)(1).~~ meet the nonfinancial eligibility conditions of the ~~AFDC~~ Medicaid program.

(2) For SSI-related individuals, ~~meets~~ meet the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.

(3) For financially eligible parent/caretaker relatives, pregnant women, infants, or children covered under § 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX), and 1931 of the Social Security Act (Act), ~~meets~~ meet the nonfinancial criteria of § 1902(l) of the Act.

(4) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, ~~meets~~ meet the nonfinancial criteria of § 1902(m) of the Act.

b. For the medically needy, ~~meets~~ meet the nonfinancial eligibility conditions of 42 CFR Part 435.

c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, ~~meets~~ meet the nonfinancial criteria of § 1905(p) of the Act.

d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, ~~meets~~ meet the nonfinancial criteria of § 1905(s).

~~3. Is residing in the United States and: May receive Medicaid eligibility if otherwise eligible. The Commonwealth provides Medicaid to citizens and~~

nationals of the United States and certain noncitizens consistent with requirements of 42 CFR 435.406, including during a reasonable opportunity period pending verification of their citizenship, national status, or satisfactory immigration status. The Commonwealth provides Medicaid eligibility to otherwise eligible individuals:

a. ~~Is a citizen~~ Who are citizens or national nationals of the United States;

b. ~~Is a~~ Who are qualified ~~alien noncitizens~~ as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996; in § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (8 USC § 1641) or whose eligibility is required by § 402(b) of PRWORA (8 USC § 1612(b)) and certain qualified noncitizens whose eligibility is not prohibited by § 403 of PRWORA (8 USC § 1613); and

(1) The Commonwealth requires lawful permanent residents to have 40 qualifying work quarters under Title II of the Social Security Act;

(2) The Commonwealth limits eligibility to seven years for certain noncitizens, including those admitted to the United States as a:

(a) Refugee under § 207 of the Immigration and Nationality Act (INA) (8 USC § 1101 et seq.);

(b) Aslyee under § 208 of the INA;

(c) Deportee whose deportation is withheld under § 243(h) or 241(b)(3) of the INA;

(d) Cuban-Haitian entrant, as defined in § 501(e) of the Refugee Education Assistance Act of 1980;

(e) Amerasian; or

(f) Victim of a severe form of trafficking.

c. ~~Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193; Who have declared themselves to be citizens or nationals of the United States, or any individual having satisfactory immigration status, during a reasonable opportunity period pending verification of their citizenship, nationality, or satisfactory immigration status consistent with requirements of §§ 1903(x), 1137(d), and 1902(ee) of the Act and 42 CFR 435.406, and 956.~~

d. ~~Is an alien~~ Who is a noncitizen, who is not a qualified ~~alien noncitizen~~, or who is a qualified ~~alien noncitizen~~ who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by ~~Public Law P.L.~~ Public Law P.L. 104-193 (coverage must be restricted to certain emergency services); or

e. ~~Is an alien~~ Who is a noncitizen who is a pregnant woman or who is a child ~~under younger than~~ the age of 19 years who is legally residing in the United States and

whose coverage is authorized under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). CHIPRA provides for coverage of the following individuals:

- (1) A qualified ~~alien~~ noncitizen as defined in § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;
- (2) ~~An alien~~ A noncitizen in nonimmigrant status who has not violated the terms of the status under which he was admitted or to which he has changed after admission;
- (3) ~~An alien~~ A noncitizen who has been paroled into the United States pursuant to § 212(d)(5) of the Immigration and Nationality Act (INA) for less than one year, except for ~~an alien~~ a noncitizen paroled for prosecution, for deferred inspection, or pending removal proceedings;
- (4) ~~An alien~~ A noncitizen who belongs to one of the following classes:
  - (a) Individuals currently in temporary resident status pursuant to § 210 or 245A of the INA;
  - (b) Individuals currently under Temporary Protected Status (TPS) pursuant to § 244 of the INA and pending applicants to TPS who have been granted employment authorization;
  - (c) Aliens Noncitizens who have been granted employment authorization under 8 USC § 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
  - (d) Family unity beneficiaries pursuant to § 301 of ~~Public Law~~ P.L. No. 101-649 as amended;
  - (e) Aliens Noncitizens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President of the United States;
  - (f) Aliens Noncitizens currently in deferred action status; and
  - (g) Aliens Noncitizens whose visa ~~petition has~~ petitions have been approved and who have a pending application for adjustment of status;
- (5) ~~A~~ Noncitizens who are pending ~~applicant~~ applicants for asylum under § 208(a) of the INA or for withholding of removal under § 241(b)(3) of the INA or under the Convention against Torture who has been granted employment authorization, and such an applicant ~~under~~ younger than the age of 14 years who has had an application pending for at least 180 days;
- (6) ~~An alien~~ A noncitizen who has been granted withholding of removal under the Convention against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in § 101(a)(27)(J) of the INA;

(8) ~~An alien~~ A noncitizen who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC § 1806(e); or

(9) ~~An alien~~ A noncitizen who is lawfully present in American Samoa under the immigration laws of American Samoa.

4. Is a resident of the ~~state~~ Commonwealth, regardless of whether or not the individual maintains the residence permanently or maintains ~~the residence as~~ a fixed address. The state has open interstate residency agreements.

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the intellectually disabled, publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. a. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

b. Shall also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself ~~or herself~~ and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in § 1902(l)(1)(A) of the Social Security Act (pregnant women and women in the postpartum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

c. Shall also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

7. a. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for ~~aliens~~ noncitizens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

b. Is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d) unless citizenship and identity has

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been verified by the Commissioner of Social Security pursuant to § 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA), or the individual is otherwise exempt from this requirement. Qualified ~~aliens~~ noncitizens signing the declaration of satisfactory immigration status must also present and have verified documents establishing the claimed immigration status. Exception: Nonqualified ~~aliens~~ noncitizens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2).

8. Is not required to apply for ~~AFDC~~ public assistance cash benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

~~9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)~~

~~10. 9.~~ Is required to apply for coverage under Medicare A, B ~~and/or~~ or D, or any combination of Medicaid A, B, and D, if it is likely that the individual would meet the eligibility criteria for any or all of those programs. The state agrees to pay any applicable premiums and cost-sharing (except those applicable under Part D) for individuals required to apply for Medicare. Application for Medicare is a condition of eligibility unless the state does not pay the Medicare premiums, deductibles or co-insurance (except those applicable under Part D) for persons covered by the Medicaid eligibility group under which the individual is applying.

~~11. 10.~~ Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

~~12. 11.~~ Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds \$500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest \$1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 years or who is

disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

## Part III Financial Eligibility

### ~~Subpart~~ Article 1

#### General

#### **12VAC30-40-90. Income and resource levels and methods.**

A. For individuals who are ~~AFDC or AFDC-related~~ medically needy or SSI recipients, the income and resource levels and methods for determining countable income and resources of the AFDC and SSI program apply, unless the plan provides for more restrictive levels and methods than SSI for SSI recipients under § 1902(f) of the Act, or more liberal methods under § 1902(r)(2) of the Act, as specified below in this section.

B. For individuals who are not ~~AFDC or AFDC-related~~ medically needy or SSI recipients in a non-section 1902(f) State state and those who are deemed to be cash assistance recipients, the financial eligibility requirements specified in this ~~subpart~~ article apply.

C. 12VAC30-40-100 specifies the methods for determining income for individuals evaluated using modified adjusted gross income (MAGI) methodology.

~~C. D.~~ D. 12VAC30-40-220 specifies the income levels for mandatory and optional categorically needy groups of individuals, including individuals with incomes related to the Federal federal income poverty level—, that is pregnant women and infants or children covered under §§ 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act and aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act—and for mandatory groups of qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act.

~~D. E.~~ E. 12VAC30-40-230 specifies the resource levels for mandatory and optional categorically needy poverty level related groups; and for medically needy groups.

~~E. F.~~ F. 12VAC30-40-260 specifies the income levels for categorically needy aged, blind, and disabled persons who are covered under requirements more restrictive than SSI.

~~F. G.~~ G. 12VAC30-40-240 specifies the methods for determining resource eligibility used by States states that have more restrictive methods than SSI, permitted under § 1902(f) of the Act.

~~G. H.~~ H. 12VAC30-40-270 specifies the resource standards to be applied for categorically needy individuals in states that have elected to impose more restrictive eligibility requirements than SSI, permitted under § 1902(f) of the Act.

~~H. I.~~ I. 12VAC30-40-280 specifies the methods for determining income eligibility used by States states that are more liberal than the methods of the cash assistance programs, permitted under § 1902(r)(2) of the Act.

~~F. J.~~ 12VAC30-40-290 specifies the methods for determining resource eligibility used by ~~States~~ states that are more liberal than the methods of the cash assistance programs, permitted under § 1902(r)(2) of the Act.

Subpart Article 2  
Income

**12VAC30-40-100. Methods of determining income.**

~~a. AFDC related~~ A. Families and Children Medically Needy individuals (except for poverty level related pregnant women, infants, and children).

~~(4)~~ 1. In determining countable income for ~~AFDC related~~ Families and Children Medically Needy individuals, the methods under the state's July 16, 1996, approved AFDC Aid to Families with Dependent Children plan and any more liberal methods described in 12VAC30-40-280 are used.

~~(2)~~ 2. In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to children living with parents until the children become 21 years of age.

~~(3)~~ 3. Agency continues to treat women eligible under the provisions of § 1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she is a member, for the 60-day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.

B. Individuals subject to the use of modified adjusted gross income (MAGI) methodology. In determining income eligibility for individuals subject to the use of MAGI-based methodologies, the following shall apply:

1. The Commonwealth shall apply MAGI-based methodologies as described in this subsection, and consistent with 42 CFR 435.603 and § 1902(e)(14) of the Act. Individuals subject to the use of MAGI-based income methodologies include:

a. Parents/caretaker relatives under §§ 1902(a)(10)(A)(i)(I) and 1931 of the Act.

b. Pregnant women under §§ 1902(a)(10)(A)(i)(I), (III), (IV), (ii)(I), (IV), (IX) and 1931 of the Act.

c. Children under the age of 19 years under §§ 1902(a)(10)(A)(i)(I), (III), (IV), (VI), (VII), (ii)(IV), (IX) and 1931 of the Act.

d. Reasonable classifications of children younger than the age of 21 years under §§ 1902(a)(10)(A)(ii)(I) and (IV) of the Act.

e. Individuals younger than the age of 21 years who are under a state adoption assistance agreement under § 1902(a)(10)(A)(ii)(VIII) of the Act.

2. In the case of determining the ongoing eligibility for individuals determined eligible for Medicaid on or before December 31, 2013, MAGI-based income methodologies shall not be applied until March 31, 2014, or the next

regularly scheduled renewal of eligibility, whichever is later, if the applications of such methods should result in determination of ineligibility prior to such date.

C. In determining family size for the eligibility determination of a pregnant woman, the pregnant woman shall be counted as herself plus each of the children she is expected to deliver. In determining family size during the eligibility determination of the other individuals in a household that includes a pregnant woman, the pregnant woman shall be counted as just herself.

D. Financial eligibility shall be determined consistent with the following provisions:

1. Financial eligibility shall be based on current monthly income and family size when determining eligibility for new applicants.

2. Financial eligibility shall be based on current monthly household income and family size when determining eligibility for currently enrolled individuals.

3. Household income shall be the sum of the MAGI-based income of every individual included in the individual's household except as provided at 42 CFR 435.603(d)(2) through 42 CFR 435.603(d)(4).

4. An amount equivalent to five percentage points of the federal poverty level for the applicable family size shall be deducted, in determining eligibility for Medicaid, from the household income in accordance with 42 CFR 435.603(d).

5. The age used for children with respect to 42 CFR 435.603(f)(3)(iv) shall be 19 years of age.

~~b. E.~~ E. Aged individuals. In determining countable income for aged individuals, including aged individuals with incomes up to the federal poverty level described in ~~section~~ § 1902(m)(1) of the Act, the following methods are used.

~~(4)~~ 1. The methods of the SSI program ~~and/or,~~ any more liberal methods described in 12VAC30-40-280, or both apply.

~~(2)~~ 2. For optional state supplement recipients in § 1902(f) states and SSI criteria states without § 1616 or § 1634 agreements, SSI methods ~~and/or,~~ any more liberal methods than SSI described in 12VAC30-40-280, or both apply.

~~(3)~~ 3. In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses.

~~e. F.~~ F. Blind individuals. In determining countable income for blind individuals, only the methods of the SSI program ~~and/or,~~ any more liberal methods described in 12VAC30-40-280, or both apply.

For optional state supplement recipients in § 1902(f) states and SSI criteria states without § 1616 or § 1634 agreements, the SSI methods ~~and/or,~~ any more liberal methods than SSI described in 12VAC30-40-280, or both apply.

In determining relative financial responsibility, the agency considers only the income of spouses living in the same

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household as available to spouses and the income of parents as available to children living with parents until the children become 21 years of age.

~~g. G.~~ Disabled individuals. In determining countable income of disabled individuals, including disabled individuals with incomes up to the federal poverty level described in § 1902(m) of the Act, the methods of the SSI program ~~and/or,~~ any more liberal methods described in 12VAC30-40-280, or both apply.

For optional state supplement recipients in § 1902(f) of the Act states and SSI criteria states without § 1616 or § 1634 agreements, the SSI methods ~~and/or,~~ any more liberal methods than SSI described in 12VAC30-40-280, or both apply.

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21 years of age.

~~e. Poverty level pregnant women, infants, and children. For pregnant women and infants or children covered under the provisions of § 1902(a)(10)(A)(i)(IV), (VI) and (VII), and § 1902(a)(10)(A)(ii)(IX) of the Act:~~

~~(1) The methods of the state's approved AFDC plan are used in determining countable income.~~

~~(2) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.~~

~~(3) The agency continues to treat women eligible under the provisions of § 1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she is a member, for the 60 day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.~~

f. H. Qualified Medicare beneficiaries. In determining countable income for qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, the methods of the SSI program ~~and/or,~~ more liberal methods described in 12VAC30-40-280, or both are used.

If an individual receives a Title II benefit, any amounts attributable to the most recent increase in the monthly insurance benefit as a result of a Title II COLA is not counted as income during a "transition period" beginning with January, when the Title II benefit for December is received, and ending with the last day of the month following the month of publication of the revised annual federal poverty level.

For individuals with Title II income, the revised poverty levels are not effective until the first day of the month following the end of the transition period.

For individuals not receiving Title II income, the revised poverty levels are effective no later than the date of publication.

g. I. Qualified disabled and working individuals. In determining countable income for qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, the methods of the SSI program are used.

## 12VAC30-40-150. Resource standard; categorically needy.

~~a. A. Section 1902(f) States states~~ (except as specified under ~~items e. and d. below~~) subsections C and D of this section for aged, blind and disabled individuals: same as SSI resource standards.

The resource standards for other individuals are the same as those in the related cash assistance program.

~~b. B. Non-1902(f) States states~~ (except as specified under ~~items e. and d. below~~) subsections C and D of this section.

1. The resource standards are the same as those in the related cash assistance program.

2. 12VAC30-40-270 specifies for 1902(f) ~~States states~~ the categorically needy resource levels for all covered categorically needy groups.

~~c. C.~~ The agency does not apply a resource standard for pregnant women ~~and or~~ infants covered under the provisions of ~~section §§~~ 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

~~d. D.~~ The agency does not apply a resource standard for parent/caretaker relatives or children covered under the provisions of § 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(I), or 1931 of the Act.

~~e. E.~~ For aged and disabled individuals described in § 1902(m)(1) of the Act who are covered under § 1902(a)(10)(A)(ii)(X) of the Act, 12VAC30-40-230 specifies the resource levels for these individuals.

### Part IV

#### Eligibility Requirements

## 12VAC30-40-220. Income eligibility levels.

### A. Mandatory Categorically Needy

~~1. AFDC related groups other than poverty level pregnant women and infants.~~

Family Size	Need Standard	Payment Standard	Maximum Payment Amounts
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See Table 1

See Table 2

STANDARDS OF ASSISTANCE (Increased annually by the increase in the Consumer Price Index)		
GROUP I		
Size of Assistance Unit	Table 1 (100%)	Table 2 (90%)
1	\$151.11	\$135.58
2	237.01	214.24
3	305.32	274.27
4	370.53	333.27
5	436.77	393.30
6	489.55	441.94
7	553.72	498.87
8	623.07	559.93
9	679.99	611.68
10	743.13	669.64
Each person above 10	63.13	57.96
MAXIMUM REIMBURSABLE PAYMENT \$403		

GROUP II		
Size of Assistance Unit	Table 1 (100%)	Table 2 (90%)
1	\$180.09	\$162.49
2	265.99	239.08
3	333.27	301.18
4	399.51	359.14
5	472.99	423.35
6	526.81	474.03
7	589.95	529.92
8	658.26	592.02
9	716.22	644.80
10	780.39	701.73
Each person above 10	63.13	57.96
MAXIMUM REIMBURSABLE PAYMENT \$435		

GROUP III		
Size of Assistance Unit	Table 1 (100%)	Table 2 (90%)
1	\$251.50	\$227.70
2	338.44	304.29
3	406.75	366.39
4	472.99	424.35
5	560.97	505.08
6	613.75	552.69
7	677.92	610.65
8	745.23	672.75
9	806.26	725.53
10	868.33	781.42
Each person above 10	63.13	57.96
MAXIMUM REIMBURSABLE PAYMENT \$518		

A. 1. Groups I, II, and III income limits are set forth in this subdivision 1.

Group I		
Size of assistance unit	Monthly	Yearly
1	\$239	\$2,868
2	364	4,368
3	464	5,568
4	563	6,756
5	663	7,956
6	748	8,976
7	844	10,128
8	945	11,340
Each additional person	98	1,176

Group II		
Size of assistance unit	Monthly	Yearly
1	\$313	\$3,756
2	449	5,388
3	565	6,780
4	675	8,100



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<u>5</u>	<u>794</u>	<u>9,528</u>
<u>6</u>	<u>895</u>	<u>10,740</u>
<u>7</u>	<u>1,002</u>	<u>12,024</u>
<u>8</u>	<u>1,119</u>	<u>13,428</u>
<u>Each additional person</u>	<u>111</u>	<u>1,332</u>

<u>Group III</u>		
<u>Size of assistance unit</u>	<u>Monthly</u>	<u>Yearly</u>
<u>1</u>	<u>\$472</u>	<u>5,664</u>
<u>2</u>	<u>633</u>	<u>7,596</u>
<u>3</u>	<u>774</u>	<u>9,288</u>
<u>4</u>	<u>909</u>	<u>10,908</u>
<u>5</u>	<u>1,074</u>	<u>12,888</u>
<u>6</u>	<u>1,195</u>	<u>14,340</u>
<u>7</u>	<u>1,330</u>	<u>15,960</u>
<u>8</u>	<u>1,471</u>	<u>17,652</u>
<u>Each additional person</u>	<u>135</u>	<u>1,620</u>

2. Pregnant women and infants under § 1902(a)(10)(i)(IV) of the Act; Effective ~~April 1, 1990,~~ January 1, 2014, based on ~~433%~~ 143% of the official federal income poverty level.

3. Children under § 1902(a)(10)(i)(VI) of the Act (children who have attained age ~~4~~ one year but have not attained age ~~6~~ six years), the income eligibility level is ~~433%~~ 143% of the federal poverty level (as revised annually in the Federal Register) for the size family involved.

4. For children under § 1902(a)(10)(i)(VII) of the Act (children who were born after September 30, 1983, and have attained age ~~6~~ six years but have not attained age 19 years), the income eligibility level is ~~400%~~ 143% of the federal poverty level (as revised annually in the Federal Register) for the size family involved.

B. Treatment of cost of living adjustment (COLA) for groups with income related to federal poverty level.

1. If an individual receives a Title II benefit, any amount attributable to the most recent increase in the monthly

insurance benefit as a result of a Title II COLA is not counted as income during a "transition period" beginning with January, when the Title II benefit for December is received, and ending with the last day of the month following the month of publication of the revised annual federal poverty level.

2. For individuals with Title II income, the revised poverty levels are not effective until the first day of the month following the end of the transition period.

3. For individuals not receiving Title II income, the revised poverty levels are effective no later than the beginning of the month following the date of publication. C. Qualified Medicare beneficiaries with incomes related to federal poverty level.

The levels for determining income eligibility for groups of qualified Medicare beneficiaries under the provisions of § 1905(p)(2)(A) of the Act are as follows:

1. Section 1902(f) states, which as of January 1, 1987, used income standards more restrictive than SSI; ~~(VA Virginia did not apply a more restrictive income standard as of January 1, 1987.)~~

Based on the following percentage of the official federal income poverty level:

Effective ~~Jan. January~~ January 1, 1989: 85%

Effective ~~Jan. January~~ January 1, 1990: 90% (no more than 100)

Effective ~~Jan. January~~ January 1, 1991: 100% (no more than 100)

Effective ~~Jan. January~~ January 1, 1992: 100%

D. Aged and disabled individuals described in § 1902(m)(1) of the Act; Level for determining income eligibility for aged and disabled persons described in § 1902(m)(1) of the Act is 80% of the official federal income poverty level (as revised annually in the Federal Register) for the size family involved.

E. Income levels—for medically needy. (Increased annually the increase in the Consumer Price Index but no higher than the level permitted to claim federal financial participation.)

1. The following income levels are applicable to all groups, urban and rural.

2. The agency has methods for excluding from its claim for ~~FFP federal financial participation~~ payments made on behalf of individuals whose income exceeds these limits.

(1)	(2)			(3)
Family Size	Net income level protected for maintenance for 12 months			Amount by which Column 2 exceeds limits specified in 42 CFR 435.1007 <sup>1</sup>
	Group I	Group II	Group III	
1	\$2,691.00	\$3,105.00	\$4,036.50	\$0

2	\$3,519.00	\$3,824.00	\$4,867.00	\$0
3	\$4,036.50	\$4,450.50	\$5,485.50	\$0
4	\$4,554.00	\$4,968.00	\$6,003.00	\$0
5	\$5,071.50	\$5,485.50	\$6,520.50	\$0
6	\$5,589.00	\$6,003.00	\$7,038.00	\$0
7	\$6,106.50	\$6,520.50	\$7,555.50	\$0
8	\$6,727.50	\$7,141.50	\$8,073.00	\$0
9	\$7,348.50	\$7,762.50	\$8,797.50	\$0
10	\$8,073.00	\$8,487.00	\$9,418.50	\$0
For each additional person, add:	\$695.52	\$695.52	\$695.52	\$0

<sup>1</sup>As authorized in § 4718 of OBRA '90.

GROUPING OF LOCALITIES

GROUP I

Counties

- |              |                |
|--------------|----------------|
| Accomack     | King George    |
| Alleghany    | King and Queen |
| Amelia       | King William   |
| Amherst      | Lancaster      |
| Appomattox   | Lee            |
| Bath         | Louisa         |
| Bedford      | Lunenburg      |
| Bland        | Madison        |
| Botetourt    | Mathews        |
| Brunswick    | Mecklenburg    |
| Buchanan     | Middlesex      |
| Buckingham   | Nelson         |
| Campbell     | New Kent       |
| Caroline     | Northampton    |
| Carroll      | Northumberland |
| Charles City | Nottoway       |
| Charlotte    | Orange         |
| Clarke       | Page           |
| Craig        | Patrick        |
| Culpeper     | Pittsylvania   |
| Cumberland   | Powhatan       |

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Dickenson	Prince Edward
Dinwiddie	Prince George
Essex	Pulaski
Fauquier	Rappahannock
Floyd	Richmond
Fluvanna	Rockbridge
Franklin	Russell
Frederick	Scott
Giles	Shenandoah
Gloucester	Smyth
Goochland	Southampton
Grayson	Spotsylvania
Greene	Stafford
Greensville	Surry
Halifax	Sussex
Hanover	Tazewell
Henry	Washington
Highland	Westmoreland
Isle of Wight	Wise
James City	Wythe
	York

Cities

Bristol	Franklin
Buena Vista	Galax
<del>Clifton Forge</del>	Norton
Danville	<del>Poquoson</del>
Emporia	Suffolk

GROUP II

Counties

Albemarle	Loudoun
Augusta	Roanoke
Chesterfield	Rockingham
Henrico	Warren

Cities

Chesapeake	Portsmouth
Covington	Radford

Harrisonburg	Richmond
Hopewell	Roanoke
Lexington	<del>Salem</del>
Lynchburg	Staunton
Martinsville	Virginia Beach
Newport News	Williamsburg
Norfolk	Winchester
Petersburg	

GROUP III

Counties

Arlington	Montgomery
Fairfax	Prince William

Cities

Alexandria	Fredericksburg
Charlottesville	Hampton
Colonial Heights	Manassas
Fairfax	Manassas Park
Falls Church	Waynesboro

**12VAC30-40-280. More liberal income disregards.**

~~A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act (Act), the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the federal poverty level for the same family size as updated annually in the Federal Register.~~

~~B. A. For ADC-related medically needy cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Social Security Act (Act) (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III) and 1902(a)(10)(C)(ii)(I)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, ~~but are not limited to,~~ (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.~~

~~C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(1)(1)(D), income in the amount of the difference between 100% and 133% of the federal poverty level (as revised annually in the Federal Register) is disregarded.~~

~~D. B. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.~~

~~E. C. For all ~~categorically needy~~ and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I), and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 years who is a student.~~

~~F. D. For all ~~categorically needy~~ and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I), and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in~~

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determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

~~G.~~ E. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) accounts (see 12VAC30-40-290).

1. The Commonwealth shall disregard any increase in the amount of unearned income in Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XVI) of the Act, or as a result of a cost of living adjustment (COLA) to the SSDI payment if this additional amount of unearned income in SSDI payment from work or COLA, or both, is deposited into the individual's designated WIN account.

2. The Commonwealth shall disregard any amount of unearned income of an enrollee as a result of the receipt of unemployment insurance benefits due to loss of employment through no fault of his own if this unearned income from unemployment insurance payments is deposited into the individual's designated WIN account. This disregard shall only apply while an enrollee is in the six-month safety net, or "grace" period.

3. The Commonwealth shall disregard earned income up to \$75,000 for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

- a. Only earnings that are deposited into a Work Incentive (WIN) account can be disregarded for eligibility purposes.
- b. All funds deposited and their source will be identified and registered with the department, for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and reporting of these earnings and other information deemed necessary by the department for the proper administration of this provision.
- c. Income from the individual's spouse, or if the individual is younger than 21 years of age, the individual's parents with whom he lives, will not be deemed to an applicant for MEDICAID WORKS or to an existing enrollee in MEDICAID WORKS when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

~~H.~~ F. For aged, blind and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of

income derived from temporary employment with the United States Census Bureau for a decennial census.

~~I.~~ G. For all ~~categorically needy and~~ medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I), and 1905(n) of the Act), the Commonwealth will disregard income derived from the temporary employment with the ~~United States~~ U.S. Census Bureau for a decennial census.

## **12VAC30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.**

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an ~~applicant/recipient~~ applicant or recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and
2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12VAC30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

- (1) It is listed at a price at current market value; and
- (2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest;

zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection, which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The

proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and ~~over~~ older are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

G. Long-term care partnership insurance policy (partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in § 7702B(b) of the Internal Revenue Code of 1986.

2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act as those requirements are set forth in § 1917(b)(5)(A) of the Social Security Act (42 USC § 1396p).

3. The policy was issued no earlier than May 1, 2007.

4. The insured individual was a resident of a partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a partnership state when coverage under the earliest policy became effective.

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5. The policy meets the inflation protection requirements set forth in § 1917(b)(1)(C)(iii)(IV) of the Social Security Act.

6. The Insurance Commissioner requires the issuer of the partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.

7. The state does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on nonpartnership policies.

8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission described in 14VAC5-200.

H. Reserved.

I. Resource exemption for Aid to Dependent Children ~~category and medically related medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III) (§ 1902(a)(10)(C) of the Act).~~ For ADC-related ~~cases, both category and medically needy cases,~~ any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

J. Disregard of resources. The Commonwealth of Virginia will disregard all resources for ~~qualified categorically needy children, pregnant women, and caretaker relatives~~ covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(IV), 1902(a)(10)(A)(ii)(VIII), 1931, and 1905(n) of the Social Security Act.

K. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and

used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

L. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

M. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while maintaining eligibility for Medicaid shall establish Work Incentive (WIN) accounts. The Commonwealth will disregard up to the current annual SSI (Social Security Act, § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration) held in WIN accounts for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN accounts are subject to the following provisions:

1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.

2. The balance of this account shall not exceed the current annual SSI (Social Security Act § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration).

3. This account will be held separate from nonexempt resources in accounts for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and reporting including deposits, withdrawals, and other information deemed necessary by the department for the proper administration of this provision.

4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

5. Resources accumulated in the Work Incentive account shall be disregarded in determining eligibility for aged, blind, and disabled Medicaid-covered groups for one year after the individual leaves the Medicaid Buy-In program.

6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN

accounts shall be disregarded for all future Medicaid eligibility determinations for aged, blind, or disabled Medicaid-covered groups.

**12VAC30-40-345. Eligibility under § 1931 of the Act. (Repealed.)**

A. The state covers low income families and children under § 1931 of the Act as follows:

AFDC children age 18 who are full time students in a secondary school or in the equivalent level of vocational or technical training.

B. In determining eligibility for Medicaid, the agency uses the AFDC standards and methodologies in effect as of July 16, 1996, with the following modifications:

1. The agency applies higher income standards than those in effect as of July 16, 1996, increased by no more than the percentage increases in the CPI-U since July 16, 1996. The agency increases the July 16, 1996, income standards shown in 12VAC30-40-220 by the annual increase in the CPI beginning July 1, 2001.

2. The agency uses less restrictive income or resource methodologies than those in effect as of July 16, 1996. The agency does not consider resources in determining eligibility. The agency disregards all earned income of a child under the age of 19 who is a student. The agency disregards the fair market value of all in kind support and maintenance as income in determining financial eligibility for the above referenced group. The agency disregards income earned from temporary employment with the United States Census Bureau for a decennial census.

3. The income or resource methodologies that the less restrictive methodologies replace are as follows:

a. Resources. The family resource limit was \$1,000. Additionally, any applicant or recipient may have or establish one savings or investment account not to exceed \$5,000 if the applicant or recipient designates that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account and any interest earned on or appreciation in the value of the funds shall be exempt when determining eligibility for as long as the funds and interest on or appreciation in value of remain in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, "purposes related to self-sufficiency" shall include, but is not limited to, paying for tuition, books and incidental expenses at any elementary, secondary or vocational school or any college or university; making down payment on a primary residence; or establishing a commercial operation that is owned by a member of the Medicaid assistance unit.

b. Income. Any interest or appreciation earned on one interest bearing savings account per medical assistance unit not to exceed \$5,000 at a financial institution, if the

applicant or recipient designates that the account is reserved for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university, or for making down payment on a primary residence or for business incubation, shall be exempt when determining eligibility for medical assistance for as long as the funds and interest remain on deposit in the account. For purposes of this section, "business incubation" means the initial establishment of a commercial operation owned by a member of the Medicaid assistance unit.

c. Income earned by a child under the age of 19 who is a student was counted in determining eligibility in accordance with the AFDC income methodologies that were in effect as of July 16, 1996.

d. The fair market value of in-kind support and maintenance is counted as income when evaluating the financial eligibility of the above referenced group. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

C. The agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. For individuals who receive TANF benefits and meet the requirements of Virginia's § 1115 waiver for the Virginia Independence Program, the agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. The waiver contains the following more liberal income disregards:

Earned income will be disregarded so long as the earnings plus the AFDC benefits are equal to or less than 100% of the Federal Income Poverty Guidelines. For any month in which earnings plus the AFDC standard of payment for the family size exceed the Federal Poverty Income Guidelines for a family of the same size, earned income above 100% of the Federal Poverty Income Guidelines shall be counted.

These waivers will apply only to TANF cash assistance recipients. These waivers will be continued only for as long as eligibility for TANF was established under the welfare reform demonstration project for which these waivers were originally approved.

VA.R. Doc. No. R17-4396; Filed May 2, 2017, 9:22 a.m.

**Fast-Track Regulation**

**Title of Regulation:** 12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-300).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 12, 2017.



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# Regulations

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Effective Date: July 27, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-125 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Section 6012(d) of the Deficit Reduction Act of 2005 (DRA) changed the Medicaid rules for the treatment of annuities. It specified (i) that Medicaid applicants be required to disclose and describe any interests they or their community spouse had in an annuity; (ii) that the state be named as a remainder beneficiary in the first position unless there is a community spouse or a minor or disabled child (if there is a community spouse or a minor or disabled child, then the state may be named in the next position after these individuals); (iii) that annuities purchased after February 8, 2006, must be treated as transfers of assets for less than fair market value unless they meet certain criteria; and (iv) that annuities purchased before February 8, 2006, but modified after that date would be subject to all requirements applicable to annuities purchased after February 8, 2006. Changes beyond the control of the individual would not cause the annuity to be subject to the specified criteria.

When DMAS modified 12VAC30-40-300 to add subsection F (see Volume 22, Issue 23 of the Virginia Register of Regulations, published July 24, 2006, and effective August 23, 2006), it did not include the requirement listed in the above paragraph at clause (iv) that annuities purchased before February 8, 2006, but modified after that date would be subject to all requirements applicable to annuities purchased after February 8, 2006.

This action remedies that inadvertent omission and aligns the annuity regulations to all Centers for Medicare and Medicaid Services guidance on the federal DRA requirements.

Purpose: The amendments add federal requirements and current practice regarding annuities purchased after February 8, 2006.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because the subject of this regulation is not controversial. DMAS has been following the federal rule contained in this action, and this change conforms the language of the regulation with federal regulations and current Virginia practice.

Substance: The section of the State Plan for Medical Assistance that is affected by this action is Eligibility Conditions and Requirements: Transfer of Resources.

DMAS has regulations concerning the treatment of annuities. Individuals who have excess resources, as compared to Medicaid's limits, often use such financial instruments to shelter or hide their resources from consideration during the eligibility determination process. Sheltering or transferring resources for less than fair market value can cause an individual's eligibility for Medicaid to be delayed for years depending on dollar value.

These regulations add a provision to 12VAC30-40-300 F 3 to indicate that the other requirements of 12VAC30-40-300 apply to changes to annuities after February 8, 2006. Such changes could be (i) additions of principal, (ii) elective withdrawals, (iii) requests to change the annuity's distribution, (iv) elections to annuitize the contract, and (v) similar actions.

Changes that occur that are beyond the control of the individual, such as a change in law, changes in policies of the insurer, or a change in the terms based on other factors would not cause the annuity to be subject to the other conditions in 12VAC30-40-300 F 3.

Issues: In 2012, the U.S. Department of Health and Human Services Office of Inspector General audited Virginia's progress in implementing certain provisions of the DRA requirements for the handling of annuities. Virginia reported successful implementation of all requirements with the exception of one. The overlooked requirement required that annuities, regardless of their purchase dates, be subject to asset transfer rules if certain transactions take place after February 8, 2006. This regulatory action addresses that previous oversight.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation conforms to section 6012(d) of the federal Deficit Reduction Act (2005) by clarifying that annuities purchased before February 8, 2006, but modified after that date are subject to all requirements applicable to annuities purchased after February 8, 2006.

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

Estimated Economic Impact. Section 6012(d) of the Deficit Reduction Act (2005) (DRA) amended rules for treatment of annuities in several aspects when determining Medicaid eligibility. The amended federal rules were incorporated into this regulation on August 9, 2006. In 2012, the U.S. Department of Health and Human Services Office of Inspector General audited Virginia's progress in implementing certain provisions of the DRA's requirements for the handling of annuities. Virginia reported successful implementation of all requirements with the exception of one.

The one, overlooked requirement was that the regulatory language did not specify annuities, regardless of their purchase dates, be subject to asset transfer rules if certain modifications are made to them after February 8, 2006. This regulatory action cures that oversight by adding language to conform to the requirements of DRA.

The proposed regulation is beneficial in that it improves the consistency between this regulation and the federal law. Since Virginia has already been treating the annuities according to federal law, no other significant economic effect is expected.

**Businesses and Entities Affected.** 178 annuities were purchased or modified by Medicaid recipients since 2006. How many of the 178 were purchased before 2006 and modified thereafter is not known.

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

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

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

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

**Small Businesses:**

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

**Costs and Other Effects.** The proposed regulation does not introduce any costs or other effects on small businesses.

**Alternative Method that Minimizes Adverse Impact.** No adverse impact on small businesses is expected.

**Adverse Impacts:**

**Businesses.** The proposed amendment does not have an adverse impact on non-small businesses.

**Localities.** The proposed amendment will not adversely affect localities.

**Other Entities.** The proposed amendment will not adversely affect other entities.

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

**Summary:**

*The amendment requires that annuities, purchased before February 8, 2006, but modified after that date, are subject to all requirements applicable to annuities purchased after February 8, 2006, except changes that are beyond the control of the individual. The amendment is in accordance with the federal Deficit Reduction Act of 2005 and corrects an inadvertent omission from a prior regulatory action.*

**12VAC30-40-300. Transfer of resources.**

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. This section includes procedures applicable to all transfers of resources.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in § 1613(c) of the Social Security Act (Act): Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

1. The agency uses a procedure ~~which that~~ provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.

2. The agency has provisions for waiver of denial of eligibility in any instance where the State state determines that a denial would work an undue hardship.

B. Other than those procedures specified elsewhere in this section, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is \$12,000 or less: the individual is ineligible for two years from the date of the transfer.

2. If the uncompensated value of the transfer is more than \$12,000: the individual is ineligible two years, plus an additional two months for every \$1,000 or part thereof of uncompensated value over \$12,000, from the date of transfer.

C. ~~Property Transfer transfer.~~ An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was \$12,000 or less. If the uncompensated value was over \$12,000 an additional two months of ineligibility will be added for each \$1,000 of additional uncompensated value (see ~~following Table the table in subdivision 7 of this subsection~~). "Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, service, ~~et cetera~~ etc.) received for the property.

Exceptions to this provision are:

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1. When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purposes of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.

a. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent, that the transfer was exclusively for another purpose.

b. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his or her age, state of health, and life expectancy.

c. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.

d. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.

2. Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.

3. When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient ~~which that~~ approximated the equity value of the property.

4. When the receiver of the property has made payment on the cost of the applicant/recipient's medical care ~~which that~~ approximates the equity value of the property.

5. When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.

6. When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) ~~which that~~ was valued at less than ~~\$1,500.00~~ \$1,500 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.

7. When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed \$2,000 prior to July 1, 1988, and shall not exceed \$2,500 after July 1, 1988.

Period of Ineligibility Due To Transfer of Property Table		
Uncompensated	Value of Property	Period of Ineligibility
0	\$12,000.00	24 months
<u>\$12,000.01</u>	\$13,000.00	26 months
<u>\$13,000.01</u>	\$14,000.00	28 months
<u>\$14,000.01</u>	\$15,000.00	30 months
<u>\$15,000.01</u>	\$16,000.00	32 months
For each additional \$1,000.00, add two months of ineligibility.		

D. The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The State plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of § 1917(c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State ~~plan~~ Plan on that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.

a. Thirty months; or

b. The total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the ~~State~~ state.

2. An individual shall not be ineligible for medical assistance by reason of ~~paragraph~~ subdivision 1 of this subsection to the extent that:

a. The resources transferred were a home and title to the home was transferred to:

(1) The spouse of such individual;

(2) A child of such individual who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act;

(3) A sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(4) A son or daughter of such individual (other than a child described in ~~clause (2))~~ subdivision 2 a (2) of this subsection) who was residing in such individual's home

for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the ~~State~~ state) provided care to such individual ~~which~~ that permitted such individual to reside at home rather than in such an institution or facility;

b. The resources were transferred to (or to another for sole benefit of) the community spouse as defined in § 1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act.

c. A satisfactory showing is made to the ~~State~~ state (in accordance with any regulations promulgated by the Secretary of United States Department of Health and Human Services) that:

(1) The individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:

(a) For real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;

(b) For real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;

(c) An irrevocable burial trust of \$2,500 or less was established on or after July 1, 1988, as compensation for the transferred money;

(d) An irrevocable burial trust over \$2500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or

(2) The resources were transferred exclusively for a purpose other than to qualify for medical assistance; the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or

(3) Consistent with § 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of § 1917(c)(2)(D) of the Social Security Act.

3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in § 1902 (a)(10)(A)(ii)(VI).

4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to \$5,000.

E. Transfers and ~~Trusts~~ After trusts after August 10, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and before February 8, 2006. It also applies to trusts established after August 10, 1993.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources ~~which~~ that the individual or the individual's spouse is entitled to but does not receive because of action:

a. By the individual or the individual's spouse;

b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of ~~Assets Rule~~ assets rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2 b of this subsection shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under ~~subsection (e)~~ of § 1915(c) of the Social Security Act.

a. Period of ~~Ineligibility~~ ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less

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than fair market value and ~~which that~~ does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in subdivision E 1 of this section on or after the look-back date specified in subdivision E 2 b of this section by

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-back ~~Date date~~. The look-back date is a date that is 36 months (or 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or ~~Section 3~~ subdivision 3 of this subsection) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act;

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(d) A son or daughter of the individual (other than a child described in ~~clause subdivision 2 C (1) (b) of this subsection~~) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual ~~which that~~ permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 years or who is disabled as defined in § 1614 of the Social Security Act or to a trust (including a trust described in subdivision 3 g of this subsection) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in subdivision 3 g of this subsection) established solely for the benefit of an individual under age 65 years ~~of age~~ who is disabled as defined in § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

(a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; ~~or~~

(b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; ~~or~~

(c) All assets transferred for less than fair market value have been returned to the individual; or

(d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. Assets ~~Held In Common With Another Person~~ held in common with another person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State state law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. Transfers by ~~Both Spouses~~ both spouses. In the case of a transfer by the spouse of an individual ~~which that~~ results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. For ~~Trust(s) Created After~~ trusts created after August 10, 1993. For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to subdivision 3 g of this subsection, these rules shall apply.

a. ~~Trust(s) Defined~~ Trust defined. The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the ~~United States~~ U.S. Secretary of Health and Human Services specifies for purposes of administration of § 1917(c) or (d) of the Social Security Act.

b. Creation of ~~Trust(s) Defined~~ trust defined. For purposes of this subsection, an individual shall be considered to have established a ~~trust(s)~~ trust if assets of the individual were used to form all or part of the corpus of the ~~trust(s)~~ trust and if any of the following individuals established the ~~trust(s)~~ trusts other than by will:

(1) The individual;

- (2) The individual's spouse;
- (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;
- (4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

c. ~~Proportional Interest In Trust(s)~~ interest in a trust. In the case of a ~~trust(s) trust~~ the corpus of which includes assets of an individual (as determined under subdivision 3 b of this subsection) and assets of any other person or persons, the provision of this section shall apply to the portion of the ~~trust(s) trust~~ attributable to the assets of the individual.

d. ~~Trust(s)~~ Affected trust. Subject to subdivision 3 g of this subsection, this section shall apply without regard to:

- (1) The purposes for which a ~~trust(s) trust~~ is established;
- (2) Whether the ~~trustee(s) trustee~~ has or exercises any discretion under the ~~trust(s) trust~~;
- (3) Any restrictions on when or whether distributions may be made from the ~~trust(s) trust~~; or
- (4) Any restrictions on the use of distributions from the ~~trust(s) trust~~.

e. ~~Revocable Trust(s) trusts~~. In the case of a revocable ~~trust(s) trust~~,

- (1) The corpus of the ~~trust(s) trust~~ shall be considered resources available to the individual;
- (2) Payments from the ~~trust(s) trust~~ to or for the benefit of the individual shall be considered income of the individual; and
- (3) Any other payments from the ~~trust(s) trust~~ shall be considered assets disposed of by the individual for the purposes of subdivision E 2 of this section.

f. ~~Irrevocable Trust(s) trust~~. In the case of an irrevocable ~~trust(s) trust~~,

- (1) If there are any circumstances under which payment from the ~~trust(s) trust~~ could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:
  - (a) To or for the benefit of the individual, shall be considered income of the individual; and
  - (b) For any other purpose, shall be considered a transfer of assets by the individual subject to subdivision E 2 of this section; and
- (2) Any portion of the ~~trust(s) trust~~ from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the

~~trust(s) trust~~ (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subdivision E 2 of this section, and the value of the ~~trust(s) trust~~ shall be determined for purposes of such section by including the amount of any payments made from such portion of the ~~trust(s) trust~~ after such date.

g. Exceptions. This section shall not apply to any of the following ~~trust(s) trusts~~:

(1) A ~~trust(s) trust~~ containing the assets of an individual under age 65 years who is disabled (as defined in ~~section § 1614(a)(3)~~ of the Social Security Act) and ~~which that~~ is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the ~~trust(s) trust~~ upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.

(2) A trust containing the assets of an individual who is disabled (as defined in ~~section § 1614(a)(3)~~ of the Social Security Act) that meets all of the following conditions:

- (a) The ~~trust(s) trust~~ is established and managed by a ~~non-profit nonprofit~~ association.
- (b) A separate account is maintained for each beneficiary of the ~~trust(s) trust~~, but, for purposes of investment and management of funds, the ~~trust(s) trust~~ pools these accounts.

(c) Accounts in the ~~trust(s) trust~~ are established solely for the benefit of individuals who are disabled (as defined in ~~section § 1614(a)(3)~~ of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(d) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the ~~trust(s) trust~~, the ~~trust(s) trust~~ pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

F. Transfers made on or after February 8, 2006. The following policy applies to medical assistance provided for services furnished on or after February 8, 2006, with respect to assets disposed of on or after February 8, 2006.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources that the individual or the individual's spouse is entitled to but does not receive because of action:

- a. By the individual or the individual's spouse;

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b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The term "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase. The term "assets" also includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage:

a. Has a repayment term that is actuarially sound (determined in accordance with actuarial publications of the Social Security Administration);

b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made; and

c. Prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of subdivisions a through c of this definition, the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of ~~Assets Rule~~ assets rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2 b of this subsection shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and for home or community-based services furnished under a waiver granted under ~~subsection (c)~~ of § 1915(c) of the Social Security Act.

a. Period of ~~Ineligibility~~ ineligibility. The ineligibility period shall begin on the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the ~~state plan~~ State Plan and would otherwise be receiving Medicaid-covered institutional level care based on an approved application

for such care but for the application of the penalty period, whichever is later, and ~~which that~~ does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months, including any fractional portion of a month, derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in subdivision 1 of this subsection on or after the look-back date specified in subdivision 2 b of this subsection by:

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-back ~~Date~~ date. The look-back date is a date that is 60 months before the first date the individual is both an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act;

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(d) A son or daughter of the individual (other than a child described in ~~clause subdivision 2 b c (1) (b) of this subsection~~) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual that permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 years or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in subdivision E 3 g of this section) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in subdivision E 3 g of this section) established solely for

the benefit of an individual under age 65 years ~~of age~~ who is disabled as defined in § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

- (a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; ~~or~~
- (b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; ~~or~~
- (c) All assets transferred for less than fair market value have been returned to the individual; or
- (d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. Assets ~~Held In Common With Another Person~~ held in common with another person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under state law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. Transfers by ~~Both Spouses~~ both spouses. In the case of a transfer by the spouse of an individual that results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. Annuities: The following shall govern annuities:

a. For purposes of this section, the purchase of an annuity by the institutionalized spouse or the community spouse will be treated as the disposal of an asset for less than fair market value unless:

- (1) The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or
- (2) The state is named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any remainder for less than fair market value.

b. The purchase of annuity by or on behalf of an annuitant who has applied for medical assistance for long-term care services will be considered a transfer of assets for less than fair market value unless:

- (1) The annuity is described in subsection (b), individual retirement annuities, or (q), deemed IRAs under qualified employer plans, of § 408 of the Internal Revenue Code of 1986; or

(2) Purchased with the proceeds from:

- (a) An account or trust described in subsection (a), individual retirement account, (c), accounts established by employers and certain associations of employees, or (p), simple retirement accounts, of § 408 of such Code;
  - (b) A simplified employee pension (within the meaning of § 408(k) of such Code); or
  - (c) A Roth IRA described in § 408A of such Code; or
- (3) The annuity is:

- (a) Irrevocable and nonassignable;
- (b) Is actuarially sound (as determined by Social Security Administration publications); and
- (c) Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

c. For annuities purchased prior to February 8, 2006, certain transactions occurring on or after that date shall make an annuity subject to this section including any action taken by the individual that changes the course of payment made by the annuity or the treatment of the income or principal of the annuity. The Commonwealth shall take such changes into account in determining the amount of the state's obligation for medical assistance or in the individual's eligibility for such assistance.

(1) These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, and similar actions.

(2) Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect shall not be subject to this section.

(3) Changes beyond the control of the individual, such as a change in law, in the policies of the insurer, or in the terms based on other factors, shall not cause the annuity to be subject to this section.

VA.R. Doc. No. R17-4474; Filed May 19, 2017, 11:44 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 Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-70).**



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# Regulations

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

Effective Date: July 13, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

*To comply with final regulations of the federal Centers for Medicare and Medicaid Services, the amendments (i) permit the provision of home health services in settings in which normal life activities take place and (ii) require physicians or certain approved non-physician practitioners to conduct and document face-to-face encounters with Medicaid beneficiaries, within specific timeframes, prior to ordering home health services.*

**12VAC30-60-70. Utilization control: ~~Home~~ home health services.**

A. Home health services ~~which that~~ meet the standards prescribed for participation under Title XVIII, ~~excluding any homebound standard,~~ will be supplied.

B. Home health services shall be provided by a home health agency that is (i) licensed by the Virginia Department of Health (VDH); or that is, (ii) certified by the ~~VDH~~ Virginia Department of Health under provisions of Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act; or that is (iii) accredited either by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or by the Community Health Accreditation Program (CHAP) established by the National League of Nursing. Services shall be provided on a part-time or intermittent basis to a recipient in ~~his place of residence~~ any setting in which normal life activities take place. The place of residence Home health services shall not ~~include~~ be furnished to individuals residing in a hospital or, nursing facility, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services must be ordered or prescribed by a physician and be part of a written plan of care that the physician shall review at least every 60 days.

C. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

1. Nursing services;
2. Home health aide services;
3. Physical therapy services;
4. Occupational therapy services; or
5. Speech-language pathology services.

D. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy,

occupational therapy, and speech-language pathology services provided by home health agencies.

1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

2. No payment shall be made for home health services unless a face-to-face encounter has been performed by an approved practitioner, as outlined in this subsection, with the Medicaid individual within the 90 days before the start of the services or within the 30 days after the start of the services. The face-to-face encounter shall be related to the primary reason the Medicaid individual requires home health services.

a. The face-to-face encounter shall be conducted by one of the following approved practitioners:

(1) A physician licensed to practice medicine;

(2) A nurse practitioner or clinical nurse specialist within the scope of his practice under state law and working in collaboration with the physician who orders the Medicaid individual's services;

(3) A certified nurse midwife within the scope of his practice under state law;

(4) A physician assistant within the scope of his practice under state law and working under the supervision of the physician who orders the Medicaid individual's services; or

(5) For Medicaid individuals admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.

b. The practitioner performing the face-to-face encounter shall document the clinical findings of the encounter in the Medicaid individual's record and communicate the clinical findings of the encounter to the ordering physician.

c. Face-to-face encounters may occur through telehealth, which shall not include by phone or email.

~~2.~~ 3. When a patient is admitted to home health services a start-of-care comprehensive assessment must be completed no later than five calendar days after the start of care date.

~~3.~~ 4. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The initial plan of care (certification) must be reviewed by the attending physician, or physician designee. The physician must sign the initial

certification before the home health agency may bill DMAS.

~~4.~~ 5. A physician shall review and recertify the plan of care every 60 days. A physician recertification shall be performed within the last five days of each current 60-day certification period, (i.e., between and including days 56-60). The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. The physician must sign the recertification before the home health agency may bill DMAS.

~~5.~~ 6. The physician-orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

~~6.~~ 7. A written physician's statement located in the medical record must certify that:

- a. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, or speech-language pathology services;
- b. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and
- c. These services were furnished while the individual was under the care of a physician.

~~7.~~ 8. The plan of care shall contain at least the following information:

- a. Diagnosis and prognosis;
- b. Functional limitations;
- c. Orders for nursing or other therapeutic services;
- d. Orders for home health aide services, when applicable;
- e. Orders for medications and treatments, when applicable;
- f. Orders for special dietary or nutritional needs, when applicable; and
- g. Orders for medical tests, when applicable, including laboratory tests and x-rays.

E. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Such post payment review audits may be unannounced. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

F. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

a. Physical therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a physical therapist licensed by the Board of Physical Therapy. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

b. Occupational therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy

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and licensed by the Virginia Board of Medicine, or an occupational therapy assistant who is certified by the National Board for Certification in Occupational Therapy under the direct supervision of an occupational therapist as defined above in this subdivision. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist, as defined above in this subdivision, who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

c. Speech-language pathology services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the ~~Virginia Department of Health Professions~~, Virginia Board of Audiology and Speech-Language Pathology.

4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

VA.R. Doc. No. R17-5023; Filed May 17, 2017, 3:00 p.m.

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## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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**Title of Regulation:** 14VAC5-120. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies (amending 14VAC5-120-70).

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

**Effective Date:** July 1, 2017.

**Agency Contact:** Elsie Andy, Principal Insurance Market Examiner, Life and Health Division, Bureau of Insurance,

State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9072, FAX (804) 371-9944, or email [elsie.andy@sc.virginia.gov](mailto:elsie.andy@sc.virginia.gov).

**Summary:**

*The amendments (i) align the indemnity coverage benefits for various types of therapies used to treat cancer with a more flexible benefit and payment structure applicable to specified disease policies and (ii) reflect more up-to-date protocols and services for cancer treatment.*

AT RICHMOND, MAY 16, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00032

Ex Parte: In the matter of Amending the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies

#### ORDER ADOPTING REVISIONS TO RULES

On March 16, 2017, the State Corporation Commission ("Commission") issued an Order to Take Notice ("Order") to consider revisions to the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies set forth in Chapter 120 of Title 14 of the Virginia Administrative Code ("Rules").

The proposal to amend the Rules at 14 VAC 5-120-70 was submitted to the Bureau of Insurance ("Bureau") by American Family Life Assurance Company ("Aflac"), through its counsel. The proposed amendments align the indemnity coverage benefits for various types of therapies used to treat cancer with a more flexible benefit and payment structure. Specifically, amendments to subdivisions 2 c (1) and (2) of section 70 of the Rules reflect more up-to-date protocols and services for cancer treatment. The Bureau reviewed and agreed with the proposal to amend the Rules in accordance with Aflac's request.

The Order required that on or before May 5, 2017, any person requesting a hearing on the amendments to the Rules shall have filed such request for a hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required any interested persons to file with the Clerk their comments in support of or in opposition to the amendments to the Rules on or before May 5, 2017. No comments were filed with the Clerk.

NOW THE COMMISSION, having considered the proposed amendments to the Rules, is of the opinion that the attached amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified

Disease Policies at Chapter 120 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-120-70, and which are attached hereto and made a part hereof, are hereby ADOPTED to be effective July 1, 2017.

(2) The Bureau forthwith shall give notice of the adoption of the amendments to the Rules to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, and to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the final amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

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

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie Blauvelt.

**14VAC5-120-70. Specified disease minimum benefit standards.**

No specified disease policy shall be delivered or issued for delivery in this Commonwealth ~~which that~~ does not meet the following minimum benefit standards. If the policy does not meet the required minimum standards, it shall not be offered for sale. These are minimum benefit standards and do not preclude the inclusion of other benefits ~~which that~~ are not inconsistent with these standards.

1. Minimum benefit standards applicable to non-cancer coverage:

a. A policy must provide coverage for each person insured under the policy on an expense incurred basis for a specifically named disease(s). This coverage must be in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of \$250, an overall aggregate benefit limit of not less than \$5,000, a uniform percentage of covered expenses that the insurer will pay of not less than 20% in increments of 10%, no inside benefit limits and a benefit period of not less than two years for at least the following:

(1) Hospital room and board and any other hospital furnished medical services or supplies;

(2) Treatment by a legally qualified physician or surgeon;

(3) Private duty services of a registered nurse (R.N.);

(4) X-ray, radium and other therapy procedures used in diagnosis and treatment;

(5) Professional ambulance for local service to or from a local hospital;

(6) Blood transfusions, including expense incurred for blood donors;

(7) Drugs and medicines prescribed by a physician;

(8) The rental of an iron lung or similar mechanical apparatus;

(9) Braces, crutches and wheel chairs as are deemed necessary by the attending physician for the treatment of the disease;

(10) Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and

(11) May include coverage of any other expenses necessarily incurred in the treatment of the disease; ~~or~~

b. A policy must provide coverage for each person insured under the policy for a specifically named disease(s) with no deductible amount, and an overall aggregate benefit limit of not less than \$25,000 payable at the rate of not less than \$50 a day while confined in a hospital and a benefit period of not less than 500 days; or

c. A policy must provide lump-sum indemnity coverage of at least \$1,000. It must provide benefits ~~which that~~ are payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of \$100 (i.e., \$1,100, \$1,200, \$1,300 . . .).

Where coverage is advertised or otherwise represented to offer generic coverage of a disease(s) (e.g., "heart disease insurance"), the same dollar amounts must be payable regardless of the particular subtype of the disease. However, in the case of clearly identifiable subtypes with significantly lower treatment costs, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

2. Minimum benefit standards applicable to cancer only or cancer combination coverage:

a. A policy must provide coverage for each person insured under the policy for cancer-only coverage or in combination with one or more other specified diseases on an expense incurred basis for services, supplies, care and treatment that are ordered or are prescribed by a physician as necessary for the treatment of cancer. This coverage must be in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of \$250, an overall aggregate benefit limit of not

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less than \$10,000, a uniform percentage of covered expenses that the insurer will pay of not less than 20% in increments of 10%, no inside benefit limits and a benefit period of not less than three years for at least the following:

- (1) Treatment by, or under the direction of, a legally qualified physician or surgeon;
- (2) X-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;
- (3) Hospital room and board and any other hospital furnished medical services or supplies;
- (4) Blood transfusions, and the administration thereof, including expense incurred for blood donors;
- (5) Drugs and medicines prescribed by a physician;
- (6) Professional ambulance for local service to or from a local hospital;
- (7) Private duty services of a registered nurse (R.N.) provided in a hospital; and
- (8) May include coverage of any other expenses necessarily incurred in the treatment of the disease; ~~or~~

b. A policy must provide benefits for each person insured under the policy for the following:

- (1) Hospital confinement in an amount of at least \$100 per day for at least 500 days;
- (2) Surgical expenses not to exceed an overall lifetime maximum of \$3,500; and
- (3) Radium, cobalt, chemotherapy, or ~~X-ray~~ x-ray therapy expenses as an outpatient to at least \$1,000. Such therapy benefit shall be restored after an insured is treatment or hospitalization free for at least 12 months; ~~or~~

c. A policy must provide ~~per diem~~ indemnity coverage.

- (1) Such coverage must provide covered persons:
  - (a) A fixed-sum payment ~~of at least \$100~~ for each day of hospital confinement for at least 365 days; ~~and~~
  - (b) A fixed-sum payment ~~equal to at least 1/2 the hospital inpatient benefit for each day of hospital or non-hospital inpatient or outpatient surgery, chemotherapy and radiation therapy for at least 365 days of treatment; and~~
  - (c) A fixed-sum payment made on the basis of a specified period of time for any chemotherapy, radiation therapy, or other similar therapy used to treat the disease.
- (2) Benefits tied to confinement in a skilled nursing ~~home~~ facility or to receipt of home health care are optional. If a policy offers these benefits, ~~they~~ it must ~~equal the following~~ provide:
  - (a) A fixed-sum payment ~~equal to at least 1/4 the hospital inpatient benefit~~ for each day of skilled nursing ~~home~~ facility confinement for at least 100 days; ~~and~~

(b) A fixed-sum payment ~~equal to at least 1/4 the hospital inpatient benefit~~ for each day of home health care for at least 100 days;

(~~e~~) Notwithstanding any other provision of this chapter, any restriction or limitation applied to the benefits in subdivisions ~~2e(2)(a)~~ 2 c (2) (a) and ~~2e(2)(b)~~ above 2 c (2) (b), whether by definition or otherwise, shall be no more restrictive than those under Medicare; or

d. A policy must provide lump-sum indemnity coverage of at least \$1,000. It must provide benefits ~~which that~~ are payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of \$100 (i.e., \$1,100, \$1,200, \$1,300 . . .).

Where coverage is advertised or otherwise represented to offer generic coverage of a disease(s) (e.g., "cancer insurance"), the same dollar amounts must be payable regardless of the particular subtype of the disease (e.g., lung or bone cancer). However, in the case of clearly identifiable subtypes with significantly lower treatment costs (e.g., skin cancer), lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

V.A.R. Doc. No. R17-5058; Filed May 18, 2017, 12:36 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Proposed Regulation

Title of Regulation: **18VAC90-50. Regulations Governing the Licensure of Massage Therapists (amending 18VAC90-50-40, 18VAC90-50-60, 18VAC90-50-70, 18VAC90-50-75, 18VAC90-50-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information:

July 18, 2017 - 10 a.m. - Conference Center, Perimeter Center, 9960 Mayland Drive, Suite 201 Richmond, VA 23233

Public Comment Deadline: August 11, 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 of the Code of Virginia authorizes the Board of Nursing to promulgate regulations to administer the regulatory system. The specific authorization to promulgate regulations for massage therapists is found in

Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

**Purpose:** Over the years since initial certification, massage therapy has evolved as a health care profession. In 2016, legislation passed in the General Assembly changing the level of regulation from certification to licensure. In the periodic review of 18VAC90-50, it was noted that there needs to be more assurance of ethical behavior and accountability for unprofessional conduct. Accordingly, the board proposes to add a requirement for initial licensure that an applicant has read the laws and regulations and will comply with the code of ethics for the profession. Additionally, the board proposes to add several new provisions to the disciplinary section regarding boundary violations, falsification of records, reporting of abuse, and patient confidentiality. Greater oversight and accountability will benefit the health, safety, and welfare of clients who avail themselves of massage therapy services.

**Substance:** In a separate action, the board amended 18VAC90-50 to conform the regulation to the statutory change from certification to licensure of massage therapists, pursuant to Chapter 324 of the 2016 Acts of Assembly. In accordance with § 2.2-4006 A 4 a of the Code of Virginia, that action was exempt from the requirements of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

In addition to changing all references from certification to licensure and adding the requirement for a criminal background for all applicants, the board published a Notice of Intended Regulatory Action. After conducting a review of all sections of 18VAC90-50 and the public comment received in response to the Notice of Periodic Review, the Advisory Board on Massage Therapy recommended and the Board of Nursing identify the following provisions being considered for amendment:

18VAC90-50-40 Initial certification: Amend to (i) require attestation of having read and that the applicant will comply with laws and regulations and the professional code of ethics relating to massage therapy and (ii) require certification of equivalency for education obtained in another country from a credentialing body acceptable to the board.

18VAC90-50-60 Provisional certification: Amend to: (i) clarify that someone is eligible for a provisional license when he has filed a completed application, including completion of educational requirement, while waiting to take the licensing examination and (ii) specify that no more than one provisional license may be granted.

18VAC90-50-70 Renewal of certification: Clarify that if a license is lapsed, one may not use the title of massage therapist and may not practice massage therapy.

18VAC90-50-80 Continuing competency requirements: Amend to expand the listing of approved providers of continuing education.

18VAC90-50-90 Disciplinary provisions: Amend to include grounds for disciplinary action currently found in other nursing regulations but missing in 18VAC90-50 for licensed massage therapists.

**Issues:** The primary advantage to the public is the greater protection for the citizens of the Commonwealth who receive massage therapy services; additional grounds for disciplinary action will further protect the privacy of patient information and protect clients from exploitation by fraud, misrepresentation, or duress. There are no disadvantages.

There are no advantages or disadvantages to the agency or the Commonwealth.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of the periodic review of regulations, the Board of Nursing (Board) proposes to amend the Regulations Governing the Licensure of Massage Therapists to: 1) offer additional options for completing continuing education; 2) explicitly include additional provisions to the standards of conduct, the violation of which may subject a licensee to disciplinary action; 3) require an attestation of compliance with laws and ethics for initial licensure; and 4) amend language for clarity.

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

Estimated Economic Impact.

Continuing Education Options: In order to renew a license biennially, a licensed massage therapist must complete at least 24 hours of continuing education or learning activities. Under the current regulation, a minimum of 12 of the 24 hours must be in activities or courses provided by a National Certification Board for Therapeutic Massage and Bodywork-approved provider. The Board proposes to allow activities or courses provided by the following organizations as well: 1) Federation of State Massage Therapy Boards, 2) American Massage Therapy Association, 3) Associated Bodywork and Massage Professionals, 4) Commission on Massage Therapy Accreditation, 5) a nationally or regionally accredited school or program of massage therapy, and 6) a school of massage therapy approved by the State Council of Higher Education for Virginia. The addition of approved providers would potentially be beneficial for licensees in that they may be able to obtain coursework at a lower cost and there may be greater opportunity to become more professionally qualified in specialty areas of practice.

Unprofessional Conduct: § 54.1-3007 of the Code of Virginia authorizes the Board to take disciplinary action for unprofessional conduct. However, it does not define unprofessional conduct. The current regulation states that unprofessional conduct shall mean, but shall not be limited to:

- a. Performing acts which constitute the practice of any other health care profession for which a license or a

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certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;

c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;

d. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include but not be limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "licensed massage therapist";

h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; or

i. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

The Board proposes to add the following five provisions to the list:

1) obtaining money or property of a patient or client by fraud, misrepresentation or duress;

2) violating state laws relating to the privacy of patient information, including but not limited to § 32.1-127.1:03 of the Code of Virginia;

3) 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;

4) providing false information to staff or board members in the course of an investigation or proceeding; and

5) violating any provision of this chapter.

All five of the proposed additional provisions are listed as actions that are considered unprofessional conduct for nurses in the Board's Regulations Governing the Practice of Nursing (18 VAC 90-19). Since the five additional provisions can in practice be considered unprofessional practice,<sup>1</sup> adding them explicitly to the regulation is beneficial in that it improves

clarity for massage therapists and other readers of the regulation. It may also reduce the likelihood that massage therapists unintentionally violate the law through ignorance of § 32.1-127.1:03, § 63.2-1509, or § 63.2-1606 of the Code of Virginia.

**Attestation of Compliance:** The Board proposes to add to the requirements for initial licensure as a massage therapist that the applicant "attest that he has read and will comply with laws and regulations and the professional Code of Ethics relating to massage therapy." This proposal may be moderately beneficial in that it may: 1) increase the likelihood that new massage therapists are consciously aware of the specifics of the applicable laws and regulations and the professional Code of Ethics, and 2) reduce the likelihood that new massage therapists inadvertently violate applicable laws and regulations and the professional Code of Ethics.

**Clarification:** Improving the clarity of the regulation would potentially also be beneficial to the extent that it reduces the likelihood that readers of the regulation misunderstand applicable rules and requirements.

**Businesses and Entities Affected.** The proposed amendments potentially affect the 8,178 licensed massage therapists in the Commonwealth,<sup>2</sup> future licensure applicants, and providers of continuing education. Most licensed massage therapists likely operate as a small business or are employed by small businesses. Most providers of continuing education are also likely small businesses.

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

**Projected Impact on Employment.** The proposed amendments are unlikely to significantly affect total employment. The proposal to allow activities or courses provided by additional organizations to count toward continuing education hours may alter where licensed massage therapists obtain their continuing education. This may moderately affect the distribution of employment across continuing education providers.

**Effects on the Use and Value of Private Property.** The proposed amendments do not significantly 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 proposal to allow activities or courses provided by additional organizations to count toward continuing education hours may lower costs for some massage therapists and their associated small firms.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

<sup>1</sup>The Code of Virginia authorizes the Board to take disciplinary action for unprofessional conduct. All of the additional provisions can reasonably be considered unprofessional conduct. In fact, all of the additional provisions are specified as unprofessional conduct in the Board's Regulations Governing the Practice of Nursing. The Regulations Governing the Licensure of Massage Therapists states that "unprofessional conduct which shall mean, but shall not be limited to:" followed by the current list. Thus, the five additional provisions can in practice currently be considered unprofessional practice

<sup>2</sup>Data source: Department of Health Professions

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

Summary:

*The proposed amendments (i) offer additional options for completion of continuing education, (ii) require an attestation of compliance with laws and ethics for initial licensure, (iii) add provisions to the standards of conduct that may subject a licensee to disciplinary action, (iv) clarify eligibility for provisional licensure, and (v) clarify the effect of a lapsed license.*

Part II  
Requirements for Licensure

**18VAC90-50-40. Initial licensure.**

A. An applicant seeking initial licensure shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program certified or approved by the State Council of Higher Education for Virginia or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of ~~§ 23-276.2~~ 23.1-226 of the Code of Virginia;
3. Has passed the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board;
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90; and

5. Has completed a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

B. An applicant shall attest that he has read and will comply with laws and regulations and the professional code of ethics relating to massage therapy.

~~B. C.~~ C. An applicant who has been licensed or certified in another country and who, ~~in the opinion of the board, meets~~ provides certification of equivalency to the educational requirements in Virginia from a credentialing body acceptable to the board shall take and pass an examination as required in subsection A of this section in order to become licensed.

**18VAC90-50-60. Provisional licensure.**

A. An eligible candidate who has filed a completed application for licensure in Virginia, including completion of education requirements, may engage in the provisional practice of massage therapy in Virginia while waiting to take the licensing examination for a period not to exceed 90 days ~~upon~~ from the date on the written authorization from the board. A provisional license may be issued for one 90-day period and may not be renewed.

B. The designation of "massage therapist" or "licensed massage therapist" shall not be used by the applicant during the 90 days of provisional licensure.

C. An applicant who fails the licensing examination shall have his provisional licensure withdrawn upon the receipt of the examination results and shall not be eligible for licensure until he passes such examination.

Part III  
Renewal and Reinstatement

**18VAC90-50-70. Renewal of licensure.**

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. The licensee shall complete the renewal form and submit it with the required fee and attest that he has complied with continuing competency requirements of 18VAC90-50-75.

C. Failure to receive the application for renewal shall not relieve the licensed massage therapist of the responsibility for renewing the license by the expiration date.

D. The license shall automatically lapse by the last day of the birth month if not renewed, and the practice of massage therapy or use of the title "massage therapist" or "licensed massage therapist" is prohibited.

**18VAC90-50-75. Continuing competency requirements.**

A. In order to renew a license biennially, a licensed massage therapist shall:

1. Hold current certification by the NCBTMB; or
2. Complete at least 24 hours of continuing education or learning activities with at least one hour in professional



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ethics. Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy and may be distributed as follows:

a. A minimum of 12 of the 24 hours shall be in activities or courses provided by ~~an NCBTMB approved provider~~ one of the following providers and may include seminars, workshops, home study courses, and continuing education courses;

(1) NCBTMB;

(2) Federation of State Massage Therapy Boards;

(3) American Massage Therapy Association;

(4) Associated Bodywork and Massage Professionals;

(5) Commission on Massage Therapy Accreditation;

(6) A nationally or regionally accredited school or program of massage therapy; or

(7) A school of massage therapy approved by the State Council of Higher Education for Virginia.

b. No more than 12 of the 24 hours may be activities or courses that may include consultation, independent reading or research, preparation for a presentation, a course in cardiopulmonary resuscitation, or other such experiences that promote continued learning.

B. A massage therapist shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The massage therapist shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of licensees to determine compliance. The persons selected for the audit shall provide evidence of current NCBTMB certification or the completed continued competency form provided by the board and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the massage therapist to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

## Part IV

### Disciplinary Provisions

#### **18VAC90-50-90. Disciplinary provisions.**

The board has the authority to deny, revoke, or suspend a license issued by it or to otherwise discipline a licensee upon

proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit, which shall mean, but shall not be limited to:

a. Filing false credentials;

b. Falsely representing facts on an application for initial licensure, or reinstatement or renewal of a license; or

c. Misrepresenting one's qualifications including scope of practice.

2. Unprofessional conduct, which shall mean, but shall not be limited to:

a. Performing acts ~~which that~~ which that constitute the practice of any other health care profession for which a license or a certificate is required or acts ~~which that~~ which that are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;

c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;

d. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include but not be limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement, or sexual conduct with a patient or client;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "licensed massage therapist";

h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; ~~or~~

i. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;

j. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 of the Code of Virginia;

k. Providing false information to staff or board members in the course of an investigation or proceeding;

l. Failing to report evidence of child abuse or neglect as required by § 63.2-1509 of the Code of Virginia or elder

abuse or neglect as required by § 63.2-1606 of the Code of Virginia;

m. Violating any provision of this chapter; or

n. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

V.A.R. Doc. No. R16-4739; Filed May 19, 2017, 12:29 p.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

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

**Title of Regulation:** 20VAC5-318. Rules Governing the Evaluation, Measurement, and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs (adding 20VAC5-318-10 through 20VAC5-318-60).

**Statutory Authority:** §§ 12.1-13 and 56-585.1 of the Code of Virginia.

**Public Hearing Information:**

September 8, 2017 - 9 a.m. - State Corporation Commission, 1300 East Main Street, 2nd Floor, Courtroom, Richmond, VA 23219

**Public Comment Deadline:** July 28, 2017.

**Agency Contact:** David Dalton, Utilities Analyst, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9634, FAX (804) 371-9350, or email david.dalton@scc.virginia.gov.

**Summary:**

*The proposed new chapter establishes minimum requirements related to evaluating, measuring, and verifying the effects of utility-sponsored demand-side management programs consisting of demand response and energy efficiency measures.*

AT RICHMOND, MAY 16, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2017-00047

Ex Parte: In the matter of Adopting New Rules Governing the Evaluation, Measurement, and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs

**ORDER FOR NOTICE AND HEARING**

On November 30, 2016, the State Corporation Commission ("Commission") issued an Order on Evaluation in Case No. PUE-2016-00022<sup>1</sup> wherein it directed the Commission Staff ("Staff") to draft proposed rules governing the evaluation, measurement, and verification of the effects of utility-sponsored demand-side management programs of general applicability to both electric and natural gas utilities ("Proposed Rules"). The Staff has prepared the Proposed Rules, which are attached hereto.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Proposed Rules should be considered for adoption; public notice of the Proposed Rules should be given; an opportunity for interested persons and entities to provide input through written and/or oral comments on the Proposed Rules should be provided; and a public hearing should be scheduled for the receipt of oral comments on the Proposed Rules.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUR-2017-00047.
- (2) The proposed new rules entitled "Rules Governing the Evaluation, Measurement, and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs," recommended to be set out at 20VAC5-318-10 through 20VAC5-318-60, are attached hereto and made a part of this Order for Notice and Hearing.
- (3) The Clerk of the Commission is hereby directed to provide a copy of this Order for Notice and Hearing, together with the Proposed Rules, to the following: Virginia Department of Mines, Minerals and Energy; Virginia Electric and Power Company; Appalachian Power Company; Kentucky Utilities Company d/b/a Old Dominion Power Company; Appalachian Natural Gas Distribution Company; Atmos Energy; Columbia Gas of Virginia, Inc.; Roanoke Gas Company; Southwestern Virginia Gas Company; Virginia Natural Gas, Inc.; Washington Gas Light Company; and the Office of the Attorney General, Division of Consumer Counsel.
- (4) Within five (5) business days of the filing of this Order for Notice and Hearing with the Clerk of the Commission, the Staff shall transmit electronically or by first class mail copies of this Order for Notice and Hearing, together with the

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Proposed Rules, to persons and entities providing comments in Case No. PUE-2016-00022 and any other persons or entities identified by the Staff as potentially having an interest in this matter. The Staff shall promptly file with the Clerk of the Commission a certificate of transmission or mailing and include a list of names and addresses of the persons and entities to whom the Order for Notice and Hearing was transmitted or mailed.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order for Notice and Hearing, together with the Proposed Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources promptly shall post a copy of this Order for Notice and Hearing, together with the Proposed Rules, on the Commission's website.

(7) On or before July 28, 2017, any interested person may file written comments on the Proposed Rules with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so on or before July 28, 2017, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with the comments. All comments shall refer to Case No. PUR-2017-00047.

(8) On or before August 11, 2017, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of a Staff Report concerning comments submitted to the Commission addressing the Proposed Rules.

(9) A public hearing shall be convened on September 8, 2017, at 9 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive comments regarding the Proposed Rules under consideration in this matter. Any person desiring to offer testimony as a public witness at this hearing should appear in the Commission's courtroom fifteen (15) minutes prior to the starting time of the hearing and identify himself or herself to the Commission's Bailiff. While no commenter is required to attend the public hearing, those persons or entities who filed written comments may attend the public hearing to provide a summary of their written comments, to add any further comments they may have, and to answer any questions the Commissioners may have regarding those comments.

(10) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the

Commission's Office of General Counsel and Division of Public Utility Regulation.

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<sup>1</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of receiving input for evaluating the establishment of protocols, a methodology, and a formula to measure the impact of energy efficiency measures, Case No. PUE-2016-00022, Doc. Con. Cen. No. 161140091, Order on Evaluation (Nov. 30, 2016).

## CHAPTER 318 RULES GOVERNING THE EVALUATION, MEASUREMENT, AND VERIFICATION OF THE EFFECTS OF UTILITY-SPONSORED DEMAND-SIDE MANAGEMENT PROGRAMS

### **20VAC5-318-10. Purpose and applicability.**

A. This chapter sets forth minimum requirements for Virginia's utilities related to evaluating, measuring, and verifying the effects of utility-sponsored demand-side management (DSM) programs consisting of demand response and energy efficiency measures. This chapter should not be construed as limiting the ability of the commission or its staff to evaluate information in addition to or beyond that identified in this chapter or to use evaluation processes and procedures beyond those contained in this chapter.

B. This chapter shall apply to all public utilities seeking commission approval of a DSM program and to all public utilities with DSM programs that have received prior commission approval.

### **20VAC5-318-20. Definitions.**

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

"Commission" means the Virginia State Corporation Commission.

"DSM" means demand-side management.

"EM&V" means evaluation, measurement, and verification.

"Emerging technologies" means technologies including automated measurement and verification software, advanced metering, building management systems, data analytics, and load monitoring systems.

### **20VAC5-318-30. Administrative procedures for evaluation, measurement, and verification planning and reporting.**

A. A utility filing for implementation of new DSM measures or programs shall file a plan for the EM&V of the proposed measures or programs as part of its application. Such plan shall comply with the standard requirements for planning filings contained in 20VAC5-318-40.

B. A utility reporting the results of DSM measures or programs shall comply with the standard requirements for EM&V reporting contained in 20VAC5-318-50.

**20VAC5-318-40. Standard requirements for evaluation, measurement, and verification planning filings.**

A. In all filings required by 20VAC5-318-30, the source of all data or estimates used as inputs for proposed DSM measures or programs, in descending order of preference, shall be:

1. Utility-specific data if available and practical;
2. Virginia-specific data if utility-specific data is unavailable or impractical. When Virginia-specific data is used, the utility shall provide an explanation as to why utility-specific data is unavailable or impractical;
3. Data from non-Virginia jurisdictions or sources, if neither utility-specific data nor Virginia-specific data is available or practical:
  - a. When data from non-Virginia jurisdictions or sources is used, the utility shall provide an explanation as to why utility-specific data is unavailable or impractical.
  - b. When data from non-Virginia jurisdictions or sources is used, the utility shall provide an explanation as to why Virginia-specific data is unavailable or impractical as well as the sources of all data, to include:
    - (1) Titles, version numbers, publication dates, and page numbers of all source documents, as appropriate; and
    - (2) An explanation as to why, in the utility's assessment, use of this data is appropriate.

B. EM&V planning documents shall include all workpapers, support documents, assumptions, and equations used in developing the proposed measures or programs.

C. EM&V planning documents shall include measure-level estimates of kilowatt, kilowatt-hour, and dekatherm savings as appropriate. An estimate that has been adjusted for free-ridership as well as an estimate that has not been adjusted for free-ridership should be included as appropriate.

D. EM&V planning documents for proposed DSM measures or programs shall include an explanation of eligibility requirements for each rate schedule to which the measures or programs are being offered and estimates of participation by customers taking service under each eligible rate schedule as appropriate.

E. EM&V planning documents for proposed DSM measures or programs shall include a comparison of the estimated annual measure or program savings to the annual usage of an average customer in each rate schedule to which the measures or programs are being offered. This will include calculation of the expected savings as a percentage of the annual usage of the eligible average customer.

F. EM&V planning documents for DSM measures or programs shall include a description of the controls to be used by the utility to verify proper installation of the proposed measures and programs, as appropriate. Additionally, plans shall require the contractors and subcontractors that will be

implementing the measures or programs to record details of serviced or replaced equipment, to include at a minimum:

1. Nameplate efficiency ratings; and
2. Serial numbers.

G. Generally, EM&V planning proposals should comply with Options A, B, C, or D from the International Performance Measurement and Verification Protocol (March 2002). However, the commission recognizes that each utility has unique characteristics, and new or modified DSM measures are constantly being developed. As such, alternative methodologies may be considered with sufficient supporting documentation and explanation of appropriateness.

H. Utilities are encouraged to consider use of emerging technologies, including "advanced measurement and verification" or "evaluation, measurement and verification 2.0" when appropriate and cost effective.

**20VAC5-318-50. Standard requirements for evaluation, measurement, and verification reporting.**

A. Utility reporting of the results of its approved DSM measures or programs should be consistent with and contrasted to the EM&V plan set forth in the filings for approval of such measures or programs or as otherwise specified in a commission order approving such measures or programs. The commission recognizes that each utility has unique characteristics, and new or modified energy efficiency measures are constantly being developed. As such, alternative methodologies may be included in reporting provided that sufficient supporting documentation and explanation of appropriateness of alternative methodologies is provided.

B. EM&V reports concerning existing measures or programs shall utilize utility-specific data when updating the analysis of the cost effectiveness of each measure, program, or portfolio to the most accurate extent possible.

C. Any changes to or variances from originally filed inputs and assumptions shall be documented and explained.

D. EM&V reports shall describe the methodologies by which the measured data was collected, including at a minimum:

1. The sampling plan; and
2. Statistical calculations upon which the reported data is based.

E. EM&V reports for ongoing DSM measures or programs shall include an explanation of eligibility requirements for each rate schedule to which the measures or programs are being offered.

F. EM&V reports for ongoing DSM measures or programs shall include a comparison of the measured annual measure or program savings estimates to the annual usage of an average customer in each rate schedule to which the measures or programs is being offered. A comparison to originally submitted estimated savings for the measures or programs shall also be provided. This will include a calculation of the

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expected savings as a percentage of the annual usage of the eligible average customer.

G. EM&V reports for ongoing DSM measures or programs shall include a description of the controls undertaken by the utility to verify proper installation of the measures or programs, as appropriate. Additionally, reports shall include details provided by contractors or subcontractors of serviced or replaced equipment, to include at a minimum:

1. Nameplate efficiency ratings; and
2. Serial numbers.

**20VAC5-318-60. Waiver.**

The commission may waive any or all parts of this chapter for good cause shown.

VA.R. Doc. No. R17-5123; Filed May 16, 2017, 6:16 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 65 (2017)

### **ADVANCING VIRGINIA'S PRESERVATION STEWARDSHIP**

#### Importance of the Order

Article V, Section 6 of the Constitution of Virginia vests in the Governor the power to veto certain items within any appropriation act. This is an essential power which permits the Governor to prevent legislative overreach and maintain fiscal discipline for the Commonwealth. Since the Supreme Court of Virginia decided *Commonwealth v. Dodson*, this power has "undoubtedly" included the ability to veto entire "items or unconstitutional provisions" in appropriation bills. 176 Va. 281, 310 (1940).

On April 28, 2017, I signed HB 1500 (the Budget Bill) with a communication of five item vetoes related to cybersecurity public service scholarships, the settlement of Medicaid claims, the expansion of the Virginia Medicaid program, new conditions on funding for the Secretary of Transportation, and funding for the Virginia Coalfields Economic Development Authority. In addition, I noted that certain language in Item 125, which would authorize the Comptroller to withhold funds from the Virginia Economic Development Partnership until it met certain conditions as approved by specific General Assembly members, was unconstitutional and unenforceable. On May 3, 2017, the Clerk of the House of Delegates indicated that he would not publish two of my five item vetoes, those related to Item 306 JJJ.4 and Item 436, considering them invalid under the Constitution of Virginia.

Frustrated by my successful veto of 120 of their bills, General Assembly members have resorted to legislating through the budget, using the appropriations power to change existing law in Virginia. This is an abuse of legislative power and a violation of the Constitution of Virginia. Moreover, the House Clerk's refusal to publish actions taken by the Governor is a profound abuse of authority, purporting to endow an unelected ministerial officer with some extra constitutional power to override the Governor's vetoes based on his own legal opinions. This is entirely improper, and it must be addressed in a manner reflective of the seriousness of the issues involved-keeping Virginia's fiscal house in order.

Accordingly, I will use my authority under the Constitution of Virginia and as the Chief Planning and Budget Officer of the Commonwealth to bring clarity to Virginia's budget.

#### Executive Agencies to Recognize Item Vetoes

As of the date of this Order, all Executive Branch agencies are hereby ordered to recognize and abide by the item vetoes I submitted to the Clerk of the House of Delegates on April 28, 2017, the date the newly-enacted budget became effective. All of these actions were legal, valid, and within the constitutional authority granted to the Governor under Article V, Section 6 of the Constitution of Virginia. Moreover, the

provision in Item 125 that delegates to three members of the General Assembly the power to decide whether money is appropriated to the Virginia Economic Development Partnership or not is clearly unconstitutional and unenforceable. I append to this Order a copy of the communication of my actions to the General Assembly, which constitute the final action on the current biennial budget.

All language stricken by my vetoes, including Item 306 JJJ.4 and the additional language purportedly added to Item 436, are null and void, and of no legal effect whatsoever. Additionally, as noted in my communication to the House, I consider Item 125.R.3 unconstitutional and unenforceable, and I order the Comptroller not to abide by its terms.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect until rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of May, 2017.

/s/ Terence R. McAuliffe  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### General Notice - State Implementation Plan Revision - General Definitions, 9VAC5-10 (Revisions C16 and I16)

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 regulation 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 regulation of the board affected by this action is General Definitions, 9VAC5-10 (Revisions C16 and I16).

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: June 12, 2017, to July 12, 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 Administrative Process Act 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: The proposed revision consists of two separate amendments to existing regulation provisions concerning the definition of volatile organic compound (VOC). On February 25, 2016 (81 FR 9339), EPA revised the definition of VOC to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate or TBAC) as a VOC. The state definition was revised accordingly under Revision B16. On

August 1, 2016 (81 FR 50330), EPA revised the definition of VOC to add 1,1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2) to the list of substances not considered to be VOCs. The state definition was revised accordingly under Revision I16.

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. Except as noted below, 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 Commonwealth of Virginia 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 comments, exhibits, and documents 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.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named at the end of this notice. 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](mailto:karen.sabasteanski@deq.virginia.gov).

**COMMISSION ON LOCAL GOVERNMENT**  
**Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commission on Local Government is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

**Schedule for the Assessment of State and Federal Mandates on Local Governments**

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903 of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor McAuliffe, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are new (in effect for at least 24 months), newly identified, or have been significantly altered as to warrant a reassessment of the mandate (and have been in effect for 24 months). In conducting these assessments, agencies will follow the process established by Executive Order 58, which became effective October 11, 2007. These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact Kristen Dahlman, Senior Policy Analyst, Commission on Local Government, email [kristen.dahlman@dhcd.virginia.gov](mailto:kristen.dahlman@dhcd.virginia.gov), or telephone (804) 371-7017, or visit the Commission's website at <http://www.dhcd.virginia.gov>.

**STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS**

Approved Schedule of Assessment Periods - July 2017 through June 2018  
 For Executive Agency Assessment of Cataloged Mandates

<b>AGENCY</b>	<b>CATALOG NUMBER</b>	<b>ASSESSMENT PERIOD</b>
Mandate Short Title		
<b>CHILDREN'S SERVICES, OFFICE OF</b>		
Referrals and Reviews of Children and Families	SHHR.CSA002	09/01/17 to 11/30/17
Appeals for Youth and Families Involving Family Services Plans	SHHR.CSA003	09/01/17 to 11/30/17
<b>EDUCATION, DEPARTMENT OF</b>		
Records of Non-Resident Students with Disabilities	SOE.DOE016	07/01/17 to 08/31/17
Local School Division Policies	SOE.DOE026	07/01/17 to 08/31/17
Staff Training for Aides working with Students with Autism Spectrum Disorders	SOE.DOE139	07/01/17 to 08/31/17
School Board Record-Keeping Requirements	SOE.DOE146	07/01/17 to 08/31/17



# General Notices/Errata

<b>ENVIRONMENTAL QUALITY, DEPARTMENT OF</b>		
Virginia Pollution Abatement Permit	SNR.DEQ022	07/01/17 to 09/30/17
Living Shorelines Loans	SNR.DEQ047	10/01/17 to 12/31/17
Regional Emissions Control Programs	SNR.DEQ048	08/01/17 to 10/31/17
<b>EMERGENCY MANAGEMENT, DEPARTMENT OF</b>		
Tax, Fee, and Registration Exemption for Out-of-State Disaster/Emergency Related Businesses	SPSHS.VDEM016	10/01/17 to 12/31/17
<b>FORENSIC SCIENCE, DEPARTMENT OF</b>		
DNA Samples Required from Certain Convicted Persons	SPSHS.DFS002	07/01/17 to 09/30/17
<b>HEALTH, VIRGINIA DEPARTMENT OF</b>		
Emergency Medical Services Criminal History Record Information	SHHR.VDH032	07/01/17 to 10/31/17
Biannual Rabies Vaccination Clinic	SHHR.VDH033	07/01/17 to 10/31/17
<b>LABOR AND INDUSTRY, DEPARTMENT OF</b>		
Voluntary Protection Program	SCT.DOLI007	07/01/17 to 09/30/17
<b>SOCIAL SERVICES, DEPARTMENT OF</b>		
Child Day Center and Family Day Home Business License Report	SHHR.DSS079	09/01/17 to 11/30/17
Putative Father Registry Search	SHHR.DSS080	09/01/17 to 11/30/17

## CRIMINAL JUSTICE SERVICES BOARD

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Criminal Justice Services Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

#### 6VAC20-240, Regulations Relating to School Security Officers

#### 6VAC20-270, Regulations Relating to Campus Security Officers

Contact Information: 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, and email [barbara.peterson-wilson@dcjs.virginia.gov](mailto:barbara.peterson-wilson@dcjs.virginia.gov).

The comment period begins June 12, 2017, and ends July 7, 2017.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Dominion Energy Virginia Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - King William County

Dominion Energy Virginia has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in King William County.

The project will be located on approximately 160 acres at 521 Hollyfield Lane in Manquin, King William County, Virginia. The solar facility will be comprised of ground-mounted single-axis tracking photovoltaic arrays and auxiliary equipment to provide approximately 17 megawatts alternating

current of nameplate capacity. The project conceptually consists of 66,528 panels plus six inverters.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE BOARD OF HEALTH

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

#### **12VAC5-125, Regulations for Bedding and Upholstered Furniture Inspection Program**

#### **12VAC5-431, Sanitary Regulations for Hotels**

Contact Information: Olivia McCormick, Program Manager, Tourist Establishment Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8146, FAX (804) 864-7475, or email [olivia.mccormick@vdh.virginia.gov](mailto:olivia.mccormick@vdh.virginia.gov).

#### **12VAC5-150, Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish**

#### **12VAC5-160, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption**

Contact Information: Keith Skiles, Director, Division of Shellfish Sanitation, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, FAX (804) 864-7481, or email [keith.skiles@vdh.virginia.gov](mailto:keith.skiles@vdh.virginia.gov).

#### **12VAC5-230, State Medical Facilities Plan**

Contact Information: Erik Bodin, Director, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email [erik.bodin@vdh.virginia.gov](mailto:erik.bodin@vdh.virginia.gov).

The comment period begins June 12, 2017, and ends July 3, 2017.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Council of Higher Education for Virginia is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

#### **8VAC40-131, Virginia Student Financial Assistance Program Regulations**

#### **8VAC40-140, Virginia Vocational Incentive Scholarship Program for Shipyard Workers Regulations**

Contact Information: Melissa Wyatt, Senior Associate for Financial Aid, State Council of Higher Education for Virginia, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-4113, FAX (804) 225-2604, or email [melissacollumwyatt@schev.edu](mailto:melissacollumwyatt@schev.edu).

The comment period begins June 12, 2017, and ends July 5, 2017.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

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# General Notices/Errata

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## VIRGINIA LOTTERY

### Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on May 24, 2017. The orders may be viewed at the Virginia Lottery, 600 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 Thirty-Six (17)

Virginia Lottery's "2017 Mega Gift Card Giveaway Promotion" Final Rules for Operation (effective June 1, 2017)

#### Director's Order Number Forty-Three (17)

Virginia's Computer-Generated Lottery Game Cash4Life® Final Rules for Game Operation (this Director's Order becomes effective on May 23, 2017, fully replaces any and all prior Virginia Lottery Cash4Life® Virginia-specific game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

#### Director's Order Number Forty-Seven (17)

Final Rules for Operation: "Subscription Program" for Certain Virginia Lottery Computer-Generated Games (this Director's Order becomes effective on May 22, 2017, fully replaces any and all Virginia Lottery "Subscription Program" Rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

#### Director's Order Number Sixty-Seven (17)

Virginia Lottery's "\$30 Scratcher Point of Sale (POS) Placement Retailer Incentive Promotion" (effective October 3, 2017)

#### Director's Order Number Sixty-Eight (17)

Virginia Lottery's "2 Ways to Win Scratch Incentive Retailer Incentive Promotion" (effective November 1, 2017)

#### Director's Order Number Sixty-Nine (17)

Virginia Lottery's "Corvette Dispenser Placement and Sales Contest Retailer Incentive Promotion" (effective July 1, 2017)

#### Director's Order Number Seventy (17)

Virginia Lottery's "Buy This, Get That Retailer Incentive Promotion" (effective September 1, 2017)

#### Director's Order Number Seventy-One (17)

Virginia Lottery's "Go for the Grand Retailer Incentive Promotion" (effective November 1, 2017)

#### Director's Order Number Seventy-Two (17)

Virginia Lottery's "Sheetz FY'18 First Half Activity Retailer Incentive Promotion" (effective July 1, 2017)

#### Director's Order Number Seventy-Three (17)

Virginia Lottery's "Holiday Games Llama\* Sign Retailer Incentive Promotion" (effective December 1, 2017)

#### Director's Order Number Seventy-Four (17)

Virginia Lottery's "Murphy USA Gas Discount Promotion Retailer Incentive Promotion" (effective July 1, 2017)

#### Director's Order Number Seventy-Five (17)

Virginia Lottery's Scratch Game 1778 "Corvette and Cash" Final Rules for Game Operation (effective May 2, 2017)

#### Director's Order Number Seventy-Nine (17)

Virginia Lottery's "GPM Loyalty Card Promotion Retailer Incentive Promotion" (effective August 1, 2017)

#### Director's Order Number Eighty (17)

Virginia Lottery's "Sell More/Earn More Retailer Incentive" (effective July 1, 2017)

#### Director's Order Number Eighty-One (17)

Virginia Lottery's Scratch Game 1791 "Pick 3" Final Rules for Game Operation (effective May 2, 2017)

#### Director's Order Number Eighty-Two (17)

Virginia Lottery's "7-Eleven First Half FY'18 Market Battle Madness Retailer Incentive Promotion" (effective July 1, 2017)

#### Director's Order Number Eighty-Three (17)

Virginia Lottery's Scratch Game 1661 "\$1,000,000 Series" Final Rules for Game Operation (effective May 22, 2017)

#### Director's Order Number Eighty-Four (17)

Virginia Lottery's Scratch Game 1769 "\$1,000,000 High Rollers Club" Final Rules for Game Operation (effective May 23, 2017)

#### Director's Order Number Eighty-Five (17)

Virginia Lottery's "FY17 Q4 Retention Promotion - Bank A Million" Final Rules for Operation (effective May 15, 2017)

#### Director's Order Number Eighty-Six (17)

Virginia Lottery's Scratch Game 1781 "20X The Money" Final Rules for Game Operation (effective May 23, 2017)

#### Director's Order Number Eighty-Seven (17)

Virginia Lottery's Scratch Game 1779 "Aces & 8's" Final Rules for Game Operation (effective May 23, 2017)

#### Director's Order Number Eighty-Eight (17)

Virginia Lottery's Scratch Game 1828 "\$5 Million Dollar Series" Final Rules for Game Operation (effective May 23, 2017)

## Director's Order Number Eighty-Nine (17)

Virginia Lottery's Scratch Game 1798 "Quick \$100" Final Rules for Game Operation (effective May 23, 2017)

### **STATE WATER CONTROL BOARD**

#### **Proposed Consent Order for Atlantic Waste Disposal, Inc.**

An enforcement action has been proposed for Atlantic Waste Disposal, Inc., for violations at the landfill located at 3474 Atlantic Lane in Waverly, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations at the landfill. Atlantic Waste Disposal had unauthorized discharges of leachate, which impacted State waters and wetlands. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX at (804) 698-4019, or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from June 12, 2017, to July 12, 2017.

#### **Proposed Consent Special Order for Carpet Care of Central Virginia, Inc.**

An enforcement action has been proposed with Carpet Care of Central Virginia, Inc. for violations in Salem, Virginia. The special order by consent will address and resolve violations of environmental 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](http://www.deq.virginia.gov). Jerry Ford, Jr. will accept comments by email at [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov), or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from June 12, 2017, to July 12, 2017.

#### **Proposed Consent Special Order for Rappahannock Concrete Corporation**

An enforcement action has been proposed for Rappahannock Concrete Corporation for alleged violations that occurred at the Rappahannock Concrete Corporation facility in Saluda, Virginia. The State Water Control Board proposes to issue a consent special order to Rappahannock Concrete Corporation to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Cynthia Akers will accept comments by email at [cynthia.akers@deq.virginia.gov](mailto:cynthia.akers@deq.virginia.gov), FAX at (804) 698-4019, or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from June 12, 2017, to July 12, 2017.

#### **Proposed Consent Special Order for Virtexco Corporation**

An enforcement action has been proposed for Virtexco Corporation for violations in Yorktown, Virginia. The State Water Control Board proposes to issue a special order by consent to Virtexco Corporation 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](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@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 June 12, 2017, to July 12, 2017.

#### **Notice of Public Meeting and Public Comment - Water Quality Management Planning Regulation Amendment**

The State Water Control Board (Board) is seeking written and oral comments from interested parties on amendments to the Water Quality Management Planning (WQMP) Regulation for the James River Basin nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers (9VAC25-720-60 C). The board is seeking public comment through the Department of Environmental Quality (DEQ).

State mandate in § 62.1-44.15 of the Code of Virginia is the source of legal authority identified to promulgate this modification. The promulgating entity is the board. The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard clean waters from pollution, to prevent and to reduce pollution, and to promote water conservation. The State Water Control Law (subdivision 10 of § 62.1-44.15) mandates the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. In addition subdivision 14 of § 62.1-44.15 requires the board to establish requirements for the treatment of sewage, industrial wastes, and other wastes that are consistent with the purposes of State Water Control Law. The specific effluent limits needed to meet the water quality goals are discretionary.

The amendments that are the subject of this notice are to 9VAC25-720-60 C and would reduce the existing total nitrogen wasteload allocation for the Dominion-Chesterfield Plant (VA0004146), located in the James River Basin by 80,000 pounds and would add a total nitrogen wasteload allocation of 80,000 pounds to the Tranlin, Inc./Vastly Facility, located in the James River Basin. These amendments to the Water Quality Management Planning Regulation (9VAC25-720) are needed to reflect the transfer of nitrogen allocation from the Virginia Electric and Power Company (Dominion) to Tranlin, Inc. (Vastly) as identified in a memorandum of understanding between the two parties dated April 5, 2017.

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## General Notices/Errata

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DEQ staff intends to recommend amendments to 9VAC25-720-60 C that would reduce the total nitrogen wasteload allocation for G02E-Dominion-Chesterfield (VA0004146) from 352,036 to 272,036 pounds, and add a total nitrogen wasteload allocation for G02E - Tranlin/Vastly in the amount of 80,000 pounds.

A public meeting on the modifications to the WQMP will be held on June 28, 2017, at 10 a.m. in the DEQ office, 629 East Main Street, Richmond, Virginia.

The public comment period will begin on June 12, 2017, and ends July 12, 2017. Although an advisory committee to assist in the modification of the WQMP has not been proposed, public comment on the use of an advisory committee is invited. Persons requesting the agency use an advisory committee and those interested in assisting should notify the DEQ contact person listed at the end of this notice by the end of the comment period and provide their name, address, phone number, email address, and the name of organization they represent (if any). Notification of the composition of the advisory panel, if established, will be sent to all requesters.

Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to the DEQ contact person: William K. Norris, Department of Environmental Quality, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698.4022, or email [william.norris@deq.virginia.gov](mailto:william.norris@deq.virginia.gov).

### Total Maximum Daily Load for Accotink Creek

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on June 28, 2017, in Burke, Virginia on the two draft total maximum daily load (TMDL) water quality study reports that were developed for the Accotink Creek watershed that is located in Fairfax County and the City of Fairfax. The meeting will start at 6:30 p.m. at the Kings Park Library meeting room, Kings Park Library, 9000 Burke Lake Road, Burke, VA 22015.

The purpose of the meeting is to present the draft sediment and chloride TMDL reports and to discuss the study with community members in order to receive feedback. There will be a 30-day public comment period for interested stakeholders to comment on the two draft reports. Written comments will be accepted from June 21, 2017, to July 21, 2017. Directions for how to submit a comment are below. Throughout the 30-day public comment period, the two draft TMDL reports can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

Biological monitoring data collected by DEQ have shown that sections of Accotink Creek and Long Branch do not meet Virginia's water quality standard for aquatic life use due to poor health in the benthic biological communities. The

stressor identification analysis, which was finalized on September 29, 2015, identified sediment, chloride, hydromodification, and habitat modification as the most probable stressors contributing to the benthic impairments in the Accotink Creek watershed. Of the four most probable stressors, only sediment and chloride are pollutants. DEQ, with assistance from the Interstate Commission on the Potomac River Basin (ICPRB), have been developing TMDLs for sediment and chloride in accordance with the Clean Water Act.

DEQ and ICPRB developed sediment and chloride TMDLs for the biologically impaired waters and will present the two draft studies at the meeting. A TMDL is the total amount of a pollutant a waterbody can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The biologically impaired streams are described in the table below.

Stream	County	Impairment	Size
Upper Accotink Creek	Fairfax County, City of Fairfax	Benthic Macroinvertebrate Bioassessments	11.59 miles
Long Branch (central)	Fairfax County, City of Fairfax	Benthic Macroinvertebrate Bioassessments	2.37 miles
Lower Accotink Creek	Fairfax County	Benthic Macroinvertebrate Bioassessments	10.09 mile

The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments on the two draft TMDL reports will be accepted from June 21, 2017, through July 21, 2017, and should include the name, address, and telephone number of the person submitting the comments. To submit written comments, please contact Will Isenberg, Office of Watershed Programs and Office of Ecology, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4228, or email [william.isenberg@deq.virginia.gov](mailto:william.isenberg@deq.virginia.gov).

For more information on this meeting or the Accotink Creek TMDL study, please contact Will Isenberg via phone, email, or conventional mail using the information listed above. All materials related to this project have been posted on the DEQ website under the "Accotink Creek" section of the webpage located at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DocumentationforSelectTMDLs.aspx>.



**Total Maximum Daily Load for Tributaries of the Rappahannock River**

Community meeting: A community meeting will be held Thursday, June 22, 2017, at 6 p.m. at Westmoreland Fire Department, 52 Rectory Road, Montross, VA 22520. This meeting will be open to the public and all are welcome to participate. For more information, please contact Anna Reh-Gingerich at telephone (804) 527-5021 or email [anna.reh-gingerich@deq.virginia.gov](mailto:anna.reh-gingerich@deq.virginia.gov).

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech Biological Systems Engineering, will announce the development of a water quality study known as a total maximum daily load (TMDL) for tributaries along the Rappahannock River located in Essex, Westmoreland, Richmond, Caroline, and King George Counties. This is an opportunity for local residents to learn about the condition of these waters, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meeting (June 23, 2017, through July 24, 2017). Persons interested in reviewing project materials through an advisory committee should notify the DEQ contact person, Anna RehGingerich, by the end of the comment period and provide their name, address, phone number, email address, and the name of the organization they represent (if any).

Meeting description: A public meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, invite participation and solicit contributions, and review next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Portions of the Rappahannock River and its tributaries were identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for Enterococci and E. coli and do not support the designated uses of "primary contact (recreational or swimming)". The specific impairments are described in the table below. Reductions and TMDLs for the causes of the impairments will be developed during the water quality study process.

Affected Waterways:  
Rappahannock Tributaries

1.	Baylors Creek (E22R-05-BAC), Assessment Unit VAP-E22R_BAY01A08, 5.89 miles, Baylors Creek from its headwaters to the extent of backwater of Baylors Pond
2.	Elmwood Creek and Tributary XHY (E22R-04-BAC), Assessment Unit VAPE22R_ELM01A06, 9.07 miles, the nontidal portion of Elmwood Creek and its

	tributary XHY in its entirety
3.	Stillwater Creek (E22R-08-BAC), Assessment Unit VAP-E22R_STL01A14, 3.52 miles, Stillwater Creek from its headwaters at Cockerel Creek downstream to its tidal limit
4.	Peedee Creek (E22R-06-BAC), Assessment Unit VAP-E22R_PEE01A08, 3.29 miles, the mainstem of Peedee Creek from its headwater to the extent of tide
5.	XHW – UT to Peedee Creek (E22R-09-BAC), Assessment Unit VAP-E22R_XHW01A14, 0.47 miles, headwaters to mouth
6.	Peedee Creek, tidal portion (E22E-03-BAC), Assessment Unit VAP-E22E_PEE01A14, 0.15 sq. miles, tidal Peedee Creek
7.	Jetts Creek (E21R-10-BAC), Assessment Unit VAN-E21R_JET01A10, 1.85 miles, segment begins at the confluence of Boom Swamp with Jetts Creek, and continues downstream to the end of the free flowing waters
8.	Portobago Creek (E21R-11-BAC), Assessment Unit VAN-E21R_PBC01A10, 7.00 miles, segment begins at the confluence of two intermittent tributaries around rivermile 6.66 and extends downstream to the end of the free-flowing water
9.	Mill Creek (E21R-07-BAC), Assessment Unit VAN-E21R_MIC01A08, 4.58 miles, begins at the confluence with Peumansend Creek, at rivermile 6.06, and continues downstream until the tidal waters of Mill Creek
10.	Rappahannock River (E22E-05-BAC), Assessment Unit VAP-E22E_RPP02A02, 3.35 sq. miles, the Rappahannock River from the tidal freshwater/oligohaline boundary downstream to river mile 51.04

How to comment and participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments will be accepted through July 24, 2017, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact:

**Contact Information:** Anna Reh-Gingerich, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, or email [anna.reh-gingerich@deq.virginia.gov](mailto:anna.reh-gingerich@deq.virginia.gov).

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## General Notices/Errata

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### Total Maximum Daily Load Implementation Plan for Upper Goose Creek, Cromwells Run, and Little River

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) Implementation Plan for Upper Goose Creek, Cromwells Run, and Little River in Fauquier and Loudoun Counties. The draft TMDL implementation plan (IP) for these streams, jointly referred to as the Upper Goose Creek (UGC) project area, can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

The mainstem of Goose Creek and six of its tributaries were listed as impaired on Virginia's 1998 and 2002 § 303(d) TMDL Priority List and Report due to exceedances of the state's water quality standard for fecal coliform bacteria. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Section 62.1-44.19:7 C of the Code of Virginia also requires expeditious implementation of TMDLs, when appropriate. To satisfy this provision, DEQ prepares TMDL IPs with measurable goals and the date that water quality objectives are expected to be achieved, the corrective actions needed, and their associated costs, benefits, and environmental impacts.

In February 2003 DEQ completed a TMDL study for the Goose Creek watershed that identified bacteria sources in each subwatershed and set limits on the amount of bacteria these waterbodies can receive and still support their designated recreational use standard. The TMDL was approved by the Environmental Protection Agency on May 1, 2003. The TMDL report is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Over the last year, DEQ has led the preparation of a comprehensive plan to guide implementation of the actions needed to address excess bacteria levels in the Upper Goose Creek project area. This effort included public involvement in the form of a June 21, 2016 public meeting and several technical workgroup sessions in June and September 2016. To bring this work to its completion, DEQ will host a final public meeting for the Upper Goose Creek project area TMDL IP on Wednesday, June 21, 2017, at 6 p.m. at the Wakefield School, 4439 Old Tavern Road, Plains, VA.

A 30-day public comment period for the meeting begins June 21, 2017, and ends July 21, 2017. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to David Evans, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3835, or email [david.evans@deq.virginia.gov](mailto:david.evans@deq.virginia.gov).

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information through Thursday, June 15, 2017:**  
*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](mailto:varegs@dls.virginia.gov).

**New Contact Information beginning Monday, June 19, 2017:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 11th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810.

**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 <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the *Virginia Register of Regulations*:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.